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4. An introduction to the finding aids of the FR/CFR system.

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WHEN: Tuesday, June 13, 2006
9:00 a.m.–Noon

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 8027 of June 2, 2006

National Oceans Week, 2006

By the President of the United States of America

A Proclamation

During National Oceans Week, we recognize the importance of the oceans to our national heritage, economy, and security and reaffirm our commitment to protecting them through wise stewardship and sensible management.

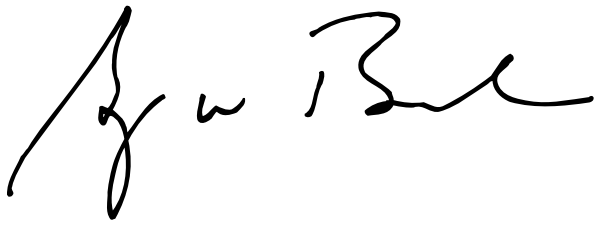
The magnificent beauty of the oceans is a blessing to our country and the world. The oceans also sustain an abundance of natural and historical treasures, enable the transportation of vital goods, and provide food and recreation for millions of people. My Administration is working with State, tribal, and local governments, the private sector, and international partners to foster more effective conservation of our oceans, coasts, and Great Lakes resources and to advance the environmental, economic, and security interests of our Nation.

On December 17, 2004, I established the Committee on Ocean Policy to implement the United States Ocean Action Plan. Through this plan, we are building an integrated ocean observing system, promoting ocean education, embarking on deep oceans research, supporting our maritime transportation system, and enhancing our international leadership role in ocean science and policy. We are also advancing legislation to strengthen the National Oceanic and Atmospheric Administration, establish a system of sustainable aquaculture, and maintain protections for marine mammals. To fulfill my commitment to end overfishing, we are working with the Congress to build an improved, market-based system to better manage our fisheries and keep our commercial and recreational fishing industries strong.

I appreciate all those who are dedicated to making the oceans, coasts, and Great Lakes cleaner, healthier, and more productive. By working together, all Americans can help sustain the oceans for generations to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 4 through June 10, 2006, as National Oceans Week. I call upon the people of the United States to learn more about the vital role the oceans play in the life of our country and how we can conserve their many natural treasures. I encourage all our citizens to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number: TM–06–06–FR]

RIN 0581–AC60

National Organic Program—Revisions to Livestock Standards Based on Court Order (Harvey v. Johanns) and 2005 Amendment to the Organic Foods Production Act of 1990 (OFPA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the National Organic Program (NOP) regulations to comply with the final judgment in the case of *Harvey* v. *Johanns* (*Harvey*) issued on June 9, 2005, by the U.S. District Court, District of Maine, and to address the November 10, 2005, amendment made to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*, the OFPA), concerning the transition of dairy livestock into organic production.

Further, this final rule revises the NOP regulations to clarify that only nonorganically produced agricultural products listed in the NOP regulations may be used as ingredients in or on processed products labeled as ''organic.'' In accordance with the final judgment in *Harvey*, the revision emphasizes that only the nonorganically produced agricultural ingredients listed in the NOP regulations can be used in accordance with any specified restrictions and when the product is not commercially available in organic form.

To comply with the court order in *Harvey*, USDA is required to publish final revisions to the NOP regulations within 360 days of the court order, or by June 4, 2006.

Accordingly, this final rule amends the NOP regulations to eliminate the use of up to 20 percent nonorganically produced feed during the first 9 months of the conversion of a whole dairy herd from conventional to organic production. This final rule also addresses the amendment made to the OFPA concerning the transition of dairy livestock into organic production by allowing crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management to be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.

DATES: Effective June 8, 2006, except for § 205.606, which is effective on June 9, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Bradley, Associate Deputy Administrator, Transportation & Marketing Programs, National Organic Program, 1400 Independence Ave., SW., Room 4008—So., Ag Stop 0268, Washington, DC 20250. Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress passed the OFPA, which required the USDA to develop national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. Based on the requirements of the OFPA, USDA established the NOP to develop national organic standards, including a National List of substances approved for and prohibited from use in organic production and handling, that would require agricultural products labeled as organic to originate from farms or handling operations certified by a State or private entity that has been accredited by USDA. On December 21, 2000, USDA published the final rule for the NOP in the **Federal Register** (7 CFR part 205). On October 21, 2002, the NOP regulations became fully implemented by USDA as the uniform standard of production and handling for organic agricultural products in the United States.

In October 2003, Arthur Harvey filed a complaint under the Administrative Procedure Act in the U.S. District Court, District of Maine. Mr. Harvey alleged that several subsections of the NOP regulations violated OFPA, were arbitrary, and not in accordance with law.

On January 26, 2005, the U.S. Court of Appeals for the First Circuit issued a decision in the case. The court upheld the NOP regulations in general, but remanded the case to the U.S. District Court, District of Maine, for, among other things, the entry of a declaratory judgment that stated 7 CFR 205.606 does not establish a blanket exemption to the National List requirements specified in 7 U.S.C. 6517, permitting the use of nonorganic agricultural products in or on processed organic products when their organic form is not commercially available. The district court ordered the Secretary to make publicly known within 30 days—through notice in the **Federal Register** to all certifying agents and interested parties—that 7 CFR 205.606 shall be interpreted to permit only the use of a nonorganically produced agricultural product that has been listed in 7 CFR 205.606 pursuant to National List procedures, and when a certifying agent has determined that the organic form of the agricultural product is not commercially available. USDA complied with this order on July 1, 2005 (70 FR 38090).

The court also ruled in favor of Mr. Harvey with respect to 7 CFR 205.605(b) of the NOP regulations, concerning the use of synthetic substances in or on processed products which contain a minimum of 95 percent organic content and are eligible to bear the USDA seal (7 CFR 205.605(b)). The court found § 205.605(b) contrary to the OFPA and in excess of the Secretary's rulemaking authority.

In addition, the court found in favor of Harvey with respect to 7 CFR 205.236(a)(2)(i) of the NOP regulations. This section creates an exception to the general requirements for the conversion of whole dairy herds to organic production. The court found the provisions at 7 CFR 205.236(a)(2)(i) contrary to the OFPA and in excess of the Secretary's rulemaking authority.

On June 9, 2005, the district court issued its final judgment and order in the case. A copy of the final judgment and order may be found at *https://www.ams.usda.gov/nop*.

Congressional Amendment to the OFPA

After the court issued its final judgment and order, Congress amended the OFPA. On November 10, 2005,

Congress amended the OFPA by permitting the addition of synthetic substances appearing on the National List for use in products labeled ''organic.'' The amendment restores the NOP regulation for organic processed products containing at least 95 percent organic ingredients on the National List and their ability to carry the USDA seal. Therefore, USDA is *not* revising the NOP regulations to prohibit the use of synthetic ingredients in processed products labeled as organic nor restrict these products' eligibility to carry the USDA seal.

Congress also amended the OFPA to allow a special provision for transitioning dairy livestock to organic production. The NOP regulations currently provided that when an entire, distinct herd is converted to organic production, the producer may, for the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements. The circuit court found these provisions to be contrary to the OFPA and in excess of the Secretary's rulemaking authority.

In the amendments to OFPA, Congress provided a new provision to allow crops and forage from land included in the organic system plan of a farm that is in the third year of organic management to be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products. USDA is revising § 205.236(a)(2) to reflect this amendment to the OFPA in this rulemaking.

II. Comments Received

We received 13,115 comments, most as form letters (13,020). Comments were received from consumers, producers, processors, trade associations, food industry organizations, certifying agents, the National Organic Standards Board (NOSB), and state governments. The majority of the comments received dealt with the proposed changes to the dairy animal language in the regulation.

Several comments requested a more lengthy comment period than the 15-day comment period provided. However, the Department determined that the changes that were mandated by the U.S. District Court to be completed by June 4, 2006, had been well publicized for over a year, as the circuit court's decision was published on January 26, 2005. To meet the mandated court deadline therefore, a shortened comment period was considered appropriate.

Comments were received dealing with paragraph § 205.606 and how commercial availability and the National List procedures applies to products labeled as ''made with organic (ingredients).'' This was an error in the proposed rule; paragraph § 205.606 should only pertain to products labeled as ''organic.'' Because products labeled as ''made with organic (ingredients)'' may, by definition, contain up to 30 percent nonorganic agricultural ingredients, regardless of commercial availability, we have corrected the language in this final rule.

Commenters requested that changes be made to § 205.600(b), dealing with the criteria by which materials are evaluated by the National Organic Standards Board (NOSB) for inclusion on the National List. Specifically, commenters asked to eliminate the words ''processing aids and adjuvants'' in the criteria of synthetics to be reviewed of handling materials under § 205.600(b). The Department has no position on this comment at this time, as the comments go beyond the scope of the proposed rule. These comments will be provided to the NOSB and the NOSB may consider whether to make a recommendation to the Department for amending the NOP regulations.

Other commenters discussed the definitions of the terms ''ingredient,'' ''processing aid,'' and ''substance.'' These commenters suggested that changes in the NOP regulations section of definitions, or elimination of some words altogether elsewhere in the NOP regulations, could improve the clarity of the NOP regulations with respect to how materials are evaluated for inclusion on the National List.

In response to the commenters' suggestions to improve the clarity of the NOP regulations by revising aforementioned terms, the Department welcomes these suggestions. However, these comments will be provided to the NOSB for consideration of a recommendation to the Department for amending the NOP regulations through future notice and comment rulemaking. As noted above, this rulemaking seeks merely to satisfy the court final order and judgment and implement the Congressional amendments at this time.

We also received several comments related to the amendment to the OFPA by Congress that authorized the Secretary to establish procedures for adding nonorganic agricultural materials to the National List in the event of an emergency if they are commercially unavailable in organic form. These commenters asked for a 60-day notice and comment rulemaking period; commenters also asked when and how the Department planned to proceed with such rulemaking. Since this amendment to the OFPA is not part of this rulemaking, the Department will proceed through normal notice and comment rulemaking procedures and consult with the NOSB prior to publishing a proposed rule on emergency petition procedures.

The vast majority of the comments received dealt with subparagraph § 205.236(a)(i). Most comments were positive for keeping the last third of gestation for conversion of an entire dairy herd in the regulation. However, these commenters wanted the last third of gestation clause to apply to all dairy operations once the operation is certified as organic, regardless of the number of animals converted, or whether an entire, distinct herd is converted.

When Congress amended the OFPA, only the feed provision was addressed, to provide a different method of transition for dairy animals entering organic production. This final rule implements the Congressional amendments and the court's final judgment. USDA recognizes that this change still leaves two methods of replacement of dairy animals for organic dairy operations and that this is a matter of concern in the organic community. To address the issue of dairy replacement animals for all certified organic dairy operations, USDA will draft an advanced notice of proposed rulemaking (ANPR) to invite public comment on further changes necessary to the NOP regulations dealing with the origin of dairy livestock under subparagraph § 205.236(a)(2), Dairy Animals.

We received comments that expressed concern that producers would be able to feed dairy animals feed and forage that had been harvested earlier than the third year, from land in transition to organic and that a certifying agent must be able to inspect the records to verify that this does not occur. This is a valid concern, and commas have been inserted in the final regulation to make clear that crops and forage must come from land that is in the third year of transition to organic.

III. Related Documents

Documents related to this final rule include the OFPA, as amended, (7 U.S.C. 6501 *et seq.*), its implementing regulations (7 CFR part 205), and a **Federal Register** notice publishing the final judgment and order in the case of *Harvey* v. *Johanns* (70 FR 38090).

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in Sec. 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under Sec. 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act and Paperwork Reduction Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities and has determined that this final rule would have an impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling just over 2 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. Based on 2003 data, certified organic acreage had increased to 2.2 million acres. By the end of 2004, the number of certified organic crop, livestock, and handling operations totaled nearly 11,400 operations, based on reports by certifying agents to NOP as part of their annual reporting requirements. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

U.S. sales of organic food and beverages have grown from $1 billion in 1990 to an estimated $12.2 billion in 2004. Organic food sales are projected to reach nearly $15 billion for 2005. The organic industry is viewed as the fastest growing sector of agriculture, representing 2 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year. This growth rate is projected to decline and fall to a rate of 5 to 10 percent in the future.

In addition, USDA has accredited 96 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

Impact of Lawsuit and Congressional Amendment on Dairy

The loss of the 80–20 feed exception can be measured depending on various feed costs, for average farm sizes, and for the sector as a whole using 2003 estimates of the number of certified dairy livestock in the United States—the latest year for which numbers are available.[1] Generally, for organic dairy operations, feed and labor are the most significant cost components, comprising upwards of 50 percent of the total variable costs of the operation.[2] Organic feed is significantly more expensive than conventional feed, and various quotes for organic feed run as high as double the cost of conventional or nonorganic feed rations. According to

[1] Greene, Catherine. Certified organic livestock, 2003, numbers were obtained from the author on permission; forthcoming from the Economic Research Service (ERS), U.S. Department of Agriculture.

[2] Dalton, Timothy J., Lisa A. Bragg, Rick Kersbergen, Robert Parson, Glenn Rogers, Dennis Kauppila, Qingbin Wang. ''Cost and Returns to Organic Dairy Farming in Maine and Vermont for 2004,'' University of Maine Department of Resource Economics and Policy Staff Paper #555, November 23, 2005.

one study, higher feed cost was the largest and most important difference between organic and nonorganic dairy production, with the additional expense of feeding organic dairy costs being 54 percent of the price differential received for organic milk.[3] In this study, for a 48-cow organic herd, purchased feed cost $1,003 per cow, or $298 per cow more than for a conventional dairy operation. For the entire year, the average farm spent approximately $49,000 for purchased organic feed for the 48-cow herd in this study.

A rough estimate of the loss of the 80–20 feed exception can be determined using this study's farm cost numbers. Using the estimated per-cow feed numbers, if a dairy farmer had to switch from using 80 percent organic feed to 100 percent organic feed, and purchased all of the organic feed, the additional cost to the dairy farmer is $27 per month, or about 2.7 percent higher than using the 80–20 feed exception.

For the sector, based on ERS's latest estimate of approximately 74,435 certified dairy cows in 2003, the loss of the 80–20 feed provision using the above cost estimates would amount to around $2 million. But this assumes: (1) *All* of the dairy cows in the sector are converted to organic in the same year; (2) *all* farm operators use the 80–20 feed provision in that same year; and (3) *all* organic feed was purchased. Because these assumptions are unlikely, the $2 million estimated for the sector likely overstates the total cost of the loss of the 80–20 feed provision. This cost estimate more likely represents an upper bound estimate based on this farm study's feed cost estimate, as if all dairy cows were converted to organic at a single point in time under the above assumptions.

TABLE 1.—COST OF LOSING 80–20 FEED PROVISION BASED ON VERMONT-MAINE DAIRY STUDY COST ESTIMATES

Organic feed per cow: $1,003 per year or $84 per month
Nonorganic feed per cow: 795 per year or $66 per month
9 months: 20% nonorganic feed cost: (0.2)×($66)×(9) = $119
80% organic feed costs: (0.8)×($84)×(9) = $605
3 months: 100% organic feed: (1.0)×($84)×(3) = $252
Total Feed Using 80–20: $976
12 months using organic feed only: 12 months×$84/cow = $1,003
Difference (loss) of 80–20, 48-cow herd: 12 mo×$27/cow loss = $1,296

[3] *Ibid.*

Instead, an alternative estimate could be derived for a growing industry that *is adding* new dairy cows to the industry. According to ERS, in 2000, there were just over 38,000 certified dairy livestock, increasing to nearly 49,000 by 2001, and 67,000 in 2002. With reports of rising milk prices and shortages in the U.S. organic dairy market in 2005, continued growth in organic dairy livestock numbers could be expected.

Therefore, an alternative estimate of the loss is to calculate the number of dairy cows added to the sector each year and assume they were all added to the sector by being converted using the 80–20 feed transition provision. Using the ERS numbers above, between 2000 and 2001, 11,000 certified dairy cows were added. Another 18,000 cows were added by 2002, and 7,435 in 2003. On average, 12,145 dairy cows were added each year since 2000. Based on these numbers from ERS and the additional cost of $27 per cow from the study above, using the 80–20 feed provision, the loss of the 80–20 provision would have cost dairy farmers approximately $327,915 per year, or nearly $1 million over the 3-year period.

Different estimates were obtained from discussions with Western state industry experts in dairy feed and nutrition, and budgets developed by certifying agents who work with certified dairy operations.[4] These estimates resulted in higher costs due to the loss of the 80–20 feed provision, of as much as $416 per cow annually, or assuming an addition of approximately 12,000 cows per year to the sector, a loss of nearly $5 million per year to the sector.

Depending on location, climate, size, and purchased feed, costs may vary considerably. The west, for example, tends to be a feed-deficit region where farmers purchase more feed and rely less on feed from on-farm or nearby sources. The farther the distance a farmer has to go to obtain feed, the more costly the feed will be, all other things being equal, making it likely that costs would vary by region or climate.

With higher milk prices, more farmers might be attracted to enter organic dairy farming. In the short run, this would add to pressure (due to more competition) on feed supplies. With the loss of the 80–20 feed provision, this could drive up the cost of feed; in the short run, therefore, there could be additional upward pressure on these cost estimates.

Regardless, these additional costs would have to be absorbed somewhere. They must either be passed forward to consumers in the form of higher fluid milk and dairy product prices—already at high premiums relative to conventional dairy product prices—or they would have to be absorbed by farmers.

However, Congress did amend OFPA for transitioning dairy farmers, by permitting such dairy farmers to graze dairy livestock on land being converted to organic production during its 3rd year of transition. Thus, the loss of the 80–20 feed exception is mitigated in part by the action that Congress took. In effect, a farm transitioning its dairy cows to organic could put its cows on that farm's pasture being converted to organic and the milk from those cows would be organic at the same time as crops being harvested from that land—at the end of the third year that the land completed organic management.

Congress leveled the playing field for dairy farmers when they amended OFPA in this area by removing any penalties that dairy farmers faced with the so-called ''4th year''— *i.e.*, the additional transition year that dairy cows underwent due to lactation cycles. And Congress did not change the basic requirement of OFPA. Dairy cows must be organically managed for at least 12 months; after these 12 months of organic management, only her *milk and milk products* may be represented as organic.

The status of the dairy *cow* is a different story. The dairy cow is only organic if she was raised organically from the last third of the mother's gestation. When a dairy cow is slaughtered, she cannot be sold as organic slaughter stock unless she was raised organically from the last third of the mother's gestation, the same as other slaughter livestock (except poultry, which must be raised organically beginning with the second day of life). That remains the same in the NOP regulation.

In providing the transition language, entry in organic dairying may become easier, which could ease current milk shortages in the organic milk market at retail. Certainly it should help smaller dairy farmers entering the organic industry who may be faced with having to purchase higher priced organic feed, by allowing them to graze dairy livestock on their land that is being transitioned to organic certification.

Other changes in this rule merely implement Congressional amendments and the court's final judgment and order. With respect to alternatives to

[4] Information provided in conversations with Pacific Nutrition-Consulting (PNC) based on USDA–ACA budgets for estimating the cost of the transition year for dairy farmers using the 80–20 feed provision.

this rule, as stated above, this rule merely implements language which Congress has enacted and complies with the court's final judgment and order.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

No additional collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, OMB clearance is not required by § 305(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

Further, given the Congressional amendments, and the court's final judgment and order, good cause exists under 5 U.S.C. 533 for not postponing the effective date of this rule, except § 205.606, until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205, is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.236 (a)(2) is revised to read as follows:

§ 205.236 Origin of Livestock.

(a) * * *

(2) *Dairy animals.* Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, *Except,*

(i) That, crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products; and

(ii) That, when an entire, distinct herd is converted to organic production, the producer may, *provided* no milk produced under this subparagraph enters the stream of commerce labeled as organic after June 9, 2007: (a) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and (b) Provide feed in compliance with § 205.237 for the final 3 months.

(iii) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

* * * * *

■ 3. Section 205.606 is revised to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic.

Only the following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as ''organic,'' only in accordance with any restrictions specified in this section, and only when the product is not commercially available in organic form.

(a) Cornstarch (native)

(b) Gums—water extracted only (arabic, guar, locust bean, carob bean)

(c) Kelp—for use only as a thickener and dietary supplement

(d) Lecithin—unbleached

(e) Pectin (high-methoxy)

Dated: June 2, 2006.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 06–5203 Filed 6–5–06; 9:14 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24953; Directorate Identifier 2006–NM–084–AD; Amendment 39–14628; AD 2006–04–11 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to certain Airbus Model A321–111, –112, and –131 airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. That AD also provides for optional terminating action for the repetitive inspections, adds inspections of three additional mounting holes, and revises the thresholds for the currently required inspections. We issued that AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane. This new AD retains the requirements and revises the applicability of that AD. This AD results from the discovery of a typographical error in the applicability of that AD, which could cause the unsafe condition on an affected airplane to remain uncorrected. We are issuing this AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

DATES: Effective June 22, 2006.

The incorporation by reference of the publications specified in the following table, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 8, 2006 (71 FR 8792, February 21, 2006).

MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	(1)	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.
A320–57–1101	03	July 30, 2003.

MATERIAL INCORPORATED BY REFERENCE—Continued

Airbus service bulletin	Revision level	Date
A320–57–1101	04	November 22, 2004.

[1] Original.

The incorporation by reference of Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 21, 2004 (69 FR 17906, April 6, 2004).

The incorporation by reference of Airbus Service Bulletin A320–57–1101, dated July 24, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

We must receive comments on this AD by August 7, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On February 9, 2006, we issued AD 2006–04–11, amendment 39–14492 (71 FR 8792, February 21, 2006), for certain Airbus Model A321–111, –112, and –131 airplanes. That AD requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. That AD also provides for optional terminating action for the repetitive inspections, adds inspections of three additional mounting holes, and revises the thresholds for the currently required inspections. That AD resulted from manufacturer analysis of the fatigue and damage tolerance of the area surrounding certain mounting holes of the MLG. We issued that AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–04–11, amendment 39–14492, a typographical error was discovered in the applicability of that AD, which could cause the unsafe condition on an affected airplane to remained uncorrected. The applicability of that AD states, ''all manufacturer serial numbers (MSN), except MSN 364 and 365.'' The correct reference should have been, ''all manufacturer serial numbers (MSN), except MSN 364 and 385.''

Clarification of No Reporting Requirement

Airbus Service Bulletin A320–57–1101, Revision 03, dated July 30, 2003, which also describes procedures for reporting inspection findings to Airbus, was inadvertently omitted from paragraph (m) of AD 2006–04–11, which specifies that we do not require reports of inspection findings. We have revised paragraph (m) of this AD to include Service Bulletin A320–57–1101, Revision 3.

FAA's Determination and Requirements of this AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

This new AD revises the applicability of AD 2006–04–11 by correcting the reference, ''all manufacturer serial numbers (MSN), except MSN 364 and 365,'' to read ''all manufacturer serial numbers (MSN), except MSN 364 and 385.'' This new AD also retains the requirements of AD 2006–04–11.

Costs of Compliance

The revisions made to this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, it would require approximately 22 work hours to accomplish the required actions at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $1,430 per airplane.

If an operator elects to accomplish the optional terminating action provided by this AD, it would take approximately 520 work hours to accomplish, at an average labor rate of $65 per work hour. The cost of required parts would be approximately $17,540 per airplane. Based on these figures, the cost impact of the optional terminating action would be $51,340 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in

less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24953; Directorate Identifier 2006–NM–084–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14492 (71 FR 8792, February 21, 2006), and adding the following new airworthiness directive (AD):

AD 2006–04–11 R1 Airbus: Amendment 39–14628. Docket No. FAA–2006–24953; Directorate Identifier 2006–NM–084–AD.

Effective Date

(a) This AD becomes effective June 22, 2006.

Affected ADs

(b) This AD revises AD 2006–04–11.

Applicability

(c) This AD applies to Airbus Model A321–111, –112, and –131 airplanes, certificated in any category; all manufacturer serial numbers (MSN), except MSN 364 and 385; and except for those airplanes that have received Airbus Modification 24977 in production.

Unsafe Condition

(d) This AD results from manufacturer analysis of the fatigue and damage tolerance of the area surrounding certain mounting holes of the main landing gear (MLG). The FAA is issuing this AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–07–15

Repetitive Inspections and Corrective Actions

(f) Prior to the accumulation of 20,000 total flight cycles, or within 120 days after December 18, 1998 (the effective date of AD 98–25–05, amendment 39–10928), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar, in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001.

(1) If no cracking is detected, prior to further flight, repair the sealant in the inspected areas and repeat the ultrasonic inspections thereafter at intervals not to exceed 7,700 flight cycles, until paragraph (g), (i), or (k) of this AD is accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Optional Terminating Action

(g) Accomplishment of visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, as applicable; and rework of the attachment holes; in accordance with Airbus Service Bulletin A320–57–1100, including Appendix 01, dated July 28, 1997; or Revision 03, including Appendices 01 and 02, dated January 16, 2003; constitutes terminating action for the repetitive inspection requirements of this AD. Actions

accomplished in accordance with Airbus Service Bulletin A320–57–1100, Revision 01, including Appendices 01 and 02, dated June 4, 1999; or Revision 02, including Appendices 01 and 02, dated October 25, 2001; are considered acceptable for compliance with the optional terminating action specified in this paragraph. If any cracking is detected during accomplishment of any inspection described in the service bulletin, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

Repetitive Inspections for Airplanes Not Previously Inspected Per Paragraph (f)

(h) For airplanes on which the initial inspection required by paragraph (f) of this AD has not been accomplished as of April 21, 2004 (the effective date of AD 2004–07–15): Accomplish the inspection required by paragraph (f) of this AD, at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) or (k) of this AD is accomplished. Accomplishment of this paragraph eliminates the need to accomplish repetitive inspections at the intervals required by paragraph (f)(1) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles.

(2) Prior to the accumulation of 37,300 total flight hours, or within 120 days after April 21, 2004, whichever occurs later.

Repetitive Inspections for Airplanes Previously Inspected Per Paragraph (f)

(i) For airplanes on which the initial inspection required by paragraph (f) of this AD has been accomplished as of April 21, 2004, and no cracking was found: Do the next inspection at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) or (k) of this AD is accomplished. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (f)(1) of this AD.

(1) Within 7,700 flight cycles since the most recent inspection.

(2) At the later of the times specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD:

(i) Within 5,500 flight cycles or 10,200 flight hours since the most recent inspection, whichever occurs first.

(ii) Within 120 days after April 21, 2004.

Existing Repair

(j) If any cracking is detected during any inspection required by paragraph (h) or (i) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

New Requirements of This AD

Initial and Repetitive Inspections

(k) Within the applicable compliance times specified by paragraph (k)(1), (k)(2), or (k)(3) of this AD, perform an ultrasonic inspection for cracking of the attachment holes of the MLG pintle fittings in the inner rear spar in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1101, Revision 03, dated July 30, 2003; or Revision 04, dated November 22, 2004. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) of this AD is accomplished. Accomplishment of this paragraph terminates the repetitive inspections required by paragraphs (f)(1), (h), and (i) of this AD.

(1) For airplanes that have never been inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001: Before the accumulation of 20,000 total flight cycles or 37,300 total flight hours, whichever occurs first; or within 120 days after the effective date of this AD; whichever occurs later.

(2) For airplanes previously inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001, that have accumulated less than 18,900 total flight cycles or 35,300 total flight hours as of the effective date of this AD: Within 5,500 flight cycles or 10,200 flight hours, whichever occurs first, after the previous inspection performed in accordance with Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001; or within 120 days after the effective date of this AD; whichever occurs later.

(3) For airplanes previously inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001, that have accumulated 18,900 or more flight cycles or 35,300 or more flight hours as of the effective date of this AD: Before the accumulation of 24,400 total flight cycles or 45,600 total flight hours, whichever occurs first; or within 120 days after the effective date of this AD; whichever occurs later.

New Repair

(l) If any crack is detected during any inspection required by paragraph (k) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

No Reporting Requirement

(m) Although Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001; Revision 03, dated July 30, 2003; and Revision 04, dated November 22, 2004; describe procedures for reporting inspection findings to Airbus, this AD does not require such a report.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(o) French airworthiness directive F–2004–166, dated October 13, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use the service information specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	(1)	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.
A320–57–1101	(1)	July 24, 1997.
A320–57–1101	02	October 25, 2001.
A320–57–1101	03	July 30, 2003.
A320–57–1101	04	November 22, 2004.

[1] Original.

The optional terminating action specified in paragraph (g) of this AD should be done in accordance with the service bulletins specified in Table 2 of this AD.

TABLE 2.—OPTIONAL SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	(1)	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.

[1] Original.

(1) The incorporation by reference of the service information specified in Table 3 of this AD was approved previously by the Director of the Federal Register as of March 8, 2006 (71 FR 8792, February 21, 2006).

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	(1)	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.
A320–57–1101	03	July 30, 2003.
A320–57–1101	04	November 22, 2004.

[1] Original.

(2) The incorporation by reference of Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001, was approved previously by the Director of the Federal Register as of April 21, 2004 (69 FR 17906, April 6, 2004).

(3) The incorporation by reference of Airbus Service Bulletin A320–57–1101, dated July 24, 1997, was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

(4) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 26, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5121 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22628; Directorate Identifier 2005–NM–056–AD; Amendment 39–14631; AD 2006–12–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –700, and –800 Series Airplanes; Model 747–400 and –400F Series Airplanes; Model 757–200 Series Airplanes; Model 767–300 Series Airplanes; and Model 777–300 Series Airplanes Equipped With Certain Driessen or Showa Galleys or Driessen Closets

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing transport category airplanes. This AD requires inspecting to determine if certain galleys and closets are installed, and replacing the spiral wire wrapping of the electrical cables of the galleys and closets with new spiral wire wrapping if necessary. This AD results from testing and reports from the manufacturer indicating unacceptable flammability properties of wire wrapping installed in certain galleys and closets. We are issuing this AD to prevent fire propagation or smoke in the cabin area due to electrical arcing or sparking and ignition of the spiral wire wrapping.

DATES: This AD becomes effective July 12, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 12, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would

apply to certain Boeing transport category airplanes. That NPRM was published in the **Federal Register** on October 7, 2005 (70 FR 58628). That NPRM proposed to require inspecting to determine if certain galleys and closets are installed, and replacing the spiral wire wrapping of the electrical cables of the galleys and closets with new spiral wire wrapping if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Four commenters, Northwest Airlines, Boeing, AirTran, and the Air Transport Association agree with the intent and contents of the NPRM.

Requests To Clarify the Applicability

Several commenters state that there are various problems interpreting the applicability of the NPRM. One commenter, Air Nippon, states that the effectivity in Boeing Special Attention Service Bulletin 737–25–1438, Revision 1, dated November 11, 2004, includes certain airplanes that are equipped with Showa galleys. However, the commenter further states that the galleys installed for these airplanes are not those referenced in Showa Aircraft Industry Service Bulletin 25–30–111, dated December 11, 2000, specifically part numbers 60216–1, 60217–1, and 60218–1. The commenter further points out that it has airplanes that have Showa galleys installed, but that those airplanes are not referenced in the Boeing service bulletin. The commenter states that it cannot proceed with the proposed actions because there is no Showa service bulletin issued for the Air Nippon airplanes. Air Nippon requests that we coordinate between both service bulletins to verify that there is consistency between the affected airplanes and the galleys installed on those airplanes. Air Nippon further states that a well-coordinated position is needed in order for it to comply with the AD.

Another commenter, Delta Airlines, states that it understands it must take action on all of its Boeing Model 767–300 airplanes (not just those listed in the Model 767's service bulletin). However, Delta states that with respect to the other service bulletins referenced in the NPRM (e.g., regarding Models 737–300, 737–800, and 757 airplanes), there are no Delta airplanes listed. The commenter states that it could be interpreted to mean that we do not need to review those other fleet types.

Yet another commenter, Alaska Airlines, points out that, although Driessen Aircraft Interior Systems Service Bulletin 25–442, Revision E, dated April 29, 2004, specifies the effectivity as ''All galleys manufactured before May 2000,'' the NPRM does not mention any difference between galleys manufactured before or after May 2000. The commenter states that it is not clear whether the AD applies to ''any'' galley having the part number specified in the Driessen service bulletin, or only to galleys manufactured before May 2000 that have the part number specified.

We do not agree that revision of the applicability of this AD is necessary. This AD does not specify the applicability of airplanes as identified in the effectivity section of any service bulletin specified in the NPRM. Since the AD identifies the airplane models it applies to in paragraph (c)(1) through (c)(5) inclusive of this AD, it means all of those airplanes that are equipped with certain Driessen Aircraft Interior Systems or Showa Aircraft Industry galleys. Identifying the applicability in this way precludes the necessity of revising the Boeing or vendor service bulletins (Showa or Driessen) to ensure that all airplanes are inspected. The actions required by this AD are not limited to the airplanes specified in certain Boeing service bulletins or to certain galleys manufactured before May 2000. After a specific line number within the Boeing production system, unacceptable spiral wire wrapping was removed and replaced with acceptable spiral wire wrapping. However, galleys can be removed and replaced with galleys other than the galleys installed at delivery of the airplane. Consequently, it is not possible to correlate the corrective action to specific airplane line numbers. Additionally, paragraph (g) of the AD clearly states that, if no galley is installed having any P/N identified in the service information specified in paragraph (f) of the AD, no further action is required.

Requests To Revise the ''Costs of Compliance'' Section of the NPRM

Two commenters, AirTran Airways and Northwest Airlines, note that certain costs specified in the Boeing service bulletins are not included in the NPRM. AirTran Airways specifies that labor costs for removal and replacement of the galley should be considered in the estimated cost of compliance. Northwest Airlines notes that one service bulletin's estimated work hours is 116 labor hours more than the NPRM's estimated work hours. Additionally, Northwest Airlines states that the estimate of two hours per galley seems to be low, and suggests that a better estimate to accomplish the work would be four hours per galley.

We do not agree that the ''Costs of Compliance'' section should be revised. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. Also, Northwest Airlines did not provide any justification as to why we should revise the number of hours estimated to remove and replace the spiral wrap from two to four. Therefore, we have determined that the estimate of two work hours based on the service bulletin is adequate. No change is necessary to the AD in this regard.

Request To Establish a Threshold for the Amount of Spiral Wrap Installed

One commenter, American Airlines, states that its fleet has less than 30 square inches of spiral wrap per airplane. Because of the small amount of material on these airplanes, American Airlines suggests that a maximum amount of material installed, such as 144 square inches, be set as the threshold for any required action. The commenter requests that no action be required for any airplanes with less spiral wrap installed than the threshold.

We do not agree with the commenter. The commenter provides no technical justification to support its suggestion that less than 144 square inches of material mitigates the unsafe condition. The amount of material the commenter suggests as an acceptable limit could potentially measure 16 linear feet, and that amount of material still has the ability to propagate a fire within the hidden area of the airplane. Therefore, we have determined that it is unnecessary to revise the AD in this regard. Under the provisions of paragraph (j)(1) of the final rule, we may approve requests for an alternative method of compliance if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Reference New Service Bulletin

One commenter, Northwest Airlines, states that the effectivity for certain

airplanes specified in the Driessen Aircraft Interior Systems service bulletin is in error. The commenter also explains that the company is aware of the error in the service bulletin and is in the process of correcting the associated descriptions for each galley part number. The commenter requests that we reference the new corrected service bulletin in the AD.

We do not agree with the commenter. During discussions with Driessen Aircraft Interior Systems, we were advised that there are no plans for updating the descriptions for these galleys. However, we do not consider that revision of the Driessen service bulletin is necessary in this case in order for operators to comply with the AD. Since the part numbers defined with the service bulletin are correct, it is only the description of the galley that could be expanded. In consideration of the flammability of the existing spiral wrap, we have determined that it would be inappropriate to delay issuance of this AD until a new service bulletin has been developed and approved. However, once the service bulletin is approved and available, the commenter may request approval of an AMOC in accordance with paragraph (j)(1) of this AD. No change to the AD is necessary in this regard.

Request To Specify Affected Part Numbers in the NPRM

One commenter, AirTran Airways, requests that we specify the affected part numbers in the NPRM. Although AirTran states that the NPRM does not affect any of its airplanes, it suggests that specifying part numbers could benefit operators.

In this case, we do not agree to specify the part numbers in the AD, since the affected part numbers are clearly specified in the referenced service information. Not only would it appear to be redundant to repeat the part numbers in the AD, but when there are large numbers of parts involved, it could increase the risk of error in repeating those part numbers in the AD.

Request To Clarify ''Maintenance Record Check of the Airplane''

One commenter, Delta Airlines, requests that the FAA clarify or expand the statement ''maintenance record check of the airplane.'' Delta suggests that, rather than a search through maintenance records, a review of installation drawings, internal Engineering Authorizations, the Illustrated Parts Catalog, and other such documents would also provide a clear picture of which galleys/closets are installed.

We do not agree with the commenter that it is necessary to expand the definition of ''airplane maintenance records.'' The NPRM uses the phrase ''airplane maintenance records,'' because that is consistent with the wording of section 121.380 (''Maintenance Recording Requirements'') of the Federal Aviation Regulations (14 CFR 121.380). That regulation defines the maintenance recording requirements for certificate holders. The term, as specified in the NPRM, is not meant to imply that determination of the installed component used must be determined from the airplane-level document, but rather the explanation as specified in section 121.380 of the Federal Aviation Regulations (14 CFR 121.380). Examples of other such supporting documents include maintenance program documentation and maintenance task cards. Therefore, we find that it is unnecessary to revise the AD in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the single clarification described previously. We have determined that this clarification will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 5,177 airplanes of the affected design in the worldwide fleet. This AD will affect about 2,621 airplanes of U.S. registry. The inspection to determine part numbers of the galleys will take about 1 work hour per galley, at an average labor rate of $65 per work hour. Some airplanes have only one galley and some have up to 11 galleys. With the exception of Boeing Model 777–300 airplanes, we estimate the cost of the inspection in this AD for U.S. operators to be between $65 and $715 per airplane.

If an operator is required to replace the spiral protective wrapping of the electrical cables of the galley, we estimate that cost will be as follows:

1. For Driessen galleys: About two work hours per galley, at an average labor rate of $65 per work hour, and the cost for the new spiral protective wrapping to be about $1,450, per galley. The estimated total cost will be about $1,580, per galley.

2. For Showa galleys: About 20 work hours per galley, at an average labor rate of $65 per work hour, and the cost of the new spiral protective wrapping to be about $1,550, per galley. The estimated total cost will be about $2,850, per galley.

Currently, there are no Boeing Model 777–300 airplanes with the subject galleys on the U.S. Register. However, if a Model 777–300 is imported and placed on the U.S. Register in the future, the required actions will take about 1 work hour per galley, at an average labor rate of $65 per work hour.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–12–06 Boeing: Amendment 39–14631. Docket No. FAA–2005–22628; Directorate Identifier 2005–NM–056–AD.

Effective Date

(a) This AD becomes effective July 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing transport category airplanes equipped with certain Driessen Aircraft Interior Systems or Showa Aircraft Industries galleys, certificated in any category; as identified in paragraphs (c)(1) through (c)(5) inclusive of this AD.

(1) Model 737–300, –400, –500, –700, and –800 series airplanes;

(2) Model 747–400 and 747–400F series airplanes;

(3) Model 757–200 series airplanes;

(4) Model 767–300 series airplanes; and

(5) Model 777–300 series airplanes.

Unsafe Condition

(d) This AD results from testing and reports from the manufacturer indicating unacceptable flammability properties of wire wrapping installed in certain galleys and closets. We are issuing this AD to prevent fire propagation or smoke in the cabin area due to electrical arcing or sparking and ignition of the spiral wire wrapping.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Note 1: For clarification and for the purposes of this AD, the use of the term ''galley'' also includes the terms ''buffet'' and ''closet'' that are referenced in certain service information specified in this AD.

Determination of Part Installation

(f) Within 72 months after the effective date of this AD, inspect the galleys to determine if any of the part numbers (P/Ns) installed are identified in the applicable service information specified in Table 1 of this AD. Instead of inspecting the galleys to determine if the P/Ns are installed, a review of airplane maintenance records is acceptable if the P/Ns can be positively determined from that review.

TABLE 1.—SERVICE BULLETINS AND SPECIAL ATTENTION SERVICE BULLETINS

Model and service information	Revision level	Date
(1) Boeing Special Attention Service Bulletin 737–25–1438, for Model 737–300, –400, and –500 series airplanes.	1	November 11, 2004.
(2) Boeing Service Bulletin 737–25–1439, for Model 737–700 and –800 series airplanes	3	November 11, 2004.
(3) Boeing Special Attention Service Bulletin 747–25–3264, for Model 747–400 series airplanes	1	November 11, 2004.
(4) Boeing Service Bulletin 747–25–3275, for Model 747–400F series airplanes	1	April 4, 2002.
(5) Boeing Special Attention 757–25–0238, for Model 757–200 series airplanes	2	November 11, 2004.
(6) Boeing Special Attention Service Bulletin 767–25–0297, for Model 767–300 series airplanes	1	November 11, 2004.
(7) Boeing Special Attention Service Bulletin 1 November 777–25–0180 for Model 777–300 series airplanes.	1	November 11, 2004.

Note 2: The service bulletins and special attention service bulletins specified in Table 1 of this AD reference Driessen Aircraft Interior Systems Service Bulletin 25–442, Revision E, dated April 29, 2004; and Showa Aircraft Industry Service Bulletin 25–30–111, dated December 11, 2000; as applicable; as additional sources of service information.

If Certain Galleys Are Not Installed

(g) If no galley is installed having any P/N identified in the service information specified in paragraph (f) of this AD, no further action is required by this AD.

If Certain Galleys Are Installed

(h) If any galley is installed having any P/N identified in the service information specified in paragraph (f) of this AD: Within 72 months after the effective date of this AD, replace the spiral protective wrapping of the electrical cables of the galley with new spiral protective wrapping that has been shown to meet certain flammability testing requirements, in accordance with the applicable service information specified in paragraph (f) of this AD.

Credit for Previous Replacement

(i) Replacement of the spiral protective wrapping of the electrical cables of any galley with new spiral protective wrapping that has been shown to meet certain flammability testing requirements, in accordance with the service information listed in the Table 2 of this AD, prior to the effective date of this AD, is acceptable for compliance with the requirements of paragraph (h) of this AD.

TABLE 2.—PREVIOUS ACCOMPLISHMENT

Boeing service information	Revision level	Date
(1) Special Attention Service Bulletin 737–25–1438	Original	March 15, 2001.
(2) Special Attention Service Bulletin 737–25–1439	Original	March 15, 2001.
(3) Special Attention Service Bulletin 737–25–1439	1	August 2, 2001.
(4) Service Bulletin 737–25–1439	2	December 19, 2001.
(5) Special Attention Service Bulletin 747–25–3264	Original	March 15, 2001.
(6) Special Attention Service Bulletin 747–25–3275	Original	March 15, 2001.
(7) Special Attention Service Bulletin 757–25–0238	Original	March 15, 2001.
(8) Special Attention Service Bulletin 757–25–0238	1	November 15, 2001.
(9) Special Attention Service Bulletin 767–25–0297	Original	March 15, 2001.
(10) Special Attention Service Bulletin 777–25–0180	Original	March 15, 2001.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use the applicable service information in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
(1) Boeing Special Attention Service Bulletin 737–25–1438	1	November 11, 2004.
(2) Boeing Service Bulletin 737–25–1439	3	November 11, 2004.
(3) Boeing Special Attention Service Bulletin 747–25–3264	1	November 11, 2004.
(4) Boeing Service Bulletin 747–25–3275	1	April 4, 2002.
(5) Boeing Special Attention Service Bulletin 757–25–0238	2	November 11, 2004.
(6) Boeing Special Attention Service Bulletin 767–25–0297	1	November 11, 2004.
(7) Boeing Special Attention Service Bulletin 777–25–0180	1	November 11, 2004.

Issued in Renton, Washington, on May 30, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5120 Filed 6–6–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24200; Directorate Identifier 2006–NM–012–AD; Amendment 39–14630; AD 2006–12–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4 Series Airplanes; Model A300 B4–600 Series Airplanes; Model A300 C4–605R Variant F Airplanes; Model A310–200 Series Airplanes; and Model A310–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. That AD currently requires a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. This new AD adds, for new airplanes, repetitive inspections of the pump bodies for cracking, damage, and missing and broken fasteners; repetitive inspections of the fuel pump canisters for a cracked flange web; and corrective actions if necessary. For all airplanes, this new AD also adds replacement of the fuel pump canisters with new reinforced fuel pump canisters, which ends the repetitive inspections. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank.

DATES: This AD becomes effective July 12, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 12, 2006.

On May 19, 2004 (69 FR 19756, April 14, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A300–600–28A6075, dated February 20, 2003.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–08–03, amendment 39–13572 (69 FR 19756, April 14, 2004). The existing AD applies to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. That NPRM was published in the **Federal Register** on March 27, 2006 (71 FR 15079). That NPRM proposed to require a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. That NPRM proposed to add, for new airplanes, repetitive inspections of the pump

bodies for cracking, damage, and missing and broken fasteners; repetitive inspections of the fuel pump canisters for a cracked flange web; and corrective actions if necessary. For all airplanes, that NPRM also proposed to add replacement of the fuel pump canisters with new reinforced fuel pump canisters, which ends the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 74 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Airbus Model—	Action	Work hours	Parts	Cost per airplane	Number U.S.-registered airplanes	Fleet cost
A300 B4–600 series airplanes and Model A300 C4–605R Variant F airplanes.	Detailed inspection (required by AD 2004–08–03).	2	None	$160	2	$320.
	Eddy current inspection (required by AD 2004–08–03).	5	None	$400, per inspection cycle.	2	$800, per inspection cycle.
	Replacements (new action).	7	$70	$630	2	1,260.
A300 B4 series airplanes.	Repetitive inspection (new action).	2	None	$160, per inspection cycle.	16	$2,560, per inspection cycle.
	Replacements (new action).	10	$80	$880	16	$14,080.
A310–200 and –300 series airplanes.	Repetitive inspection (new action).	2	None	$160, per inspection cycle.	56	$8,960, per inspection cycle.
	Replacements (new action).	10	$50	$850	56	$47,600.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13572 (69 FR 19756, April 14, 2004) and by adding the following new airworthiness directive (AD):

2006–12–05 Airbus: Amendment 39–14630. Docket No. FAA–2006–24200; Directorate Identifier 2006–NM–012–AD.

Effective Date

(a) This AD becomes effective July 12, 2006.

Affected ADs

(b) This AD supersedes AD 2004–08–03.

Applicability

(c) This AD applies to the Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; and Model A300 C4–605R Variant F airplanes; except those airplanes equipped with a fuel trim tank system (that have incorporated Airbus Modification 4801).

(2) All Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–08–03

Detailed Inspections

(f) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes: Within 15 days after May 19, 2004 (the effective date of AD 2004–08–03) (unless accomplished previously), perform detailed inspections as specified in paragraphs (f)(1) and (f)(2) of this AD, in accordance with paragraph 4.2 of Airbus All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003; or Revision 01, dated October 24, 2005.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) Inspect the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings to detect cracks, fretting, and other damage. Replace any damaged pump and the corresponding fuel pump canister with new parts before further flight in accordance with the AOT.

(2) Inspect the center tank fuel pump canisters to detect cracks. Replace any cracked fuel pump canister and the corresponding fuel pump with new parts before further flight in accordance with the AOT.

Repetitive Inspections With New Repetitive Intervals

(g) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes: Within 600 flight hours after May 19, 2004, perform a detailed inspection of the fuel pumps, and an eddy current inspection of the fuel pump canisters, to detect damage. Do the inspections in accordance with paragraph 4.3 of Airbus AOT A300–600–28A6075, dated February 20, 2003; or Revision 01, dated October 24, 2005. Replace any damaged part with a new part before further flight in accordance with the AOT. Repeat the inspections at intervals not to exceed 3,000 flight cycles.

(h) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes: Within 7,000 flight cycles after canister replacement as specified in paragraph (g) of this AD, perform an eddy current inspection of the fuel pump canisters to detect damage in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003; or Revision 01, dated October 24, 2005. Replace any damaged part with a new part before further flight in accordance with the AOT. Thereafter repeat the inspection at intervals not to exceed 3,000 flight cycles.

Note 2: Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the eddy current inspection required by paragraphs (g) and (h) of this AD.

Reporting Requirement

(i) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, submit a report of findings (both positive and negative) of each inspection required by this AD, in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection accomplished after May 19, 2004: Submit the report within 10 days after performing that inspection.

(2) For any inspection accomplished before May 19, 2004: Submit the report within 10 days after May 19, 2004.

Requirements of This AD

Repetitive Inspections for New Airplanes

(j) For Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes: At the applicable compliance time specified in paragraphs (j)(1) and (j)(2) of this AD, do a detailed inspection of the pump bodies for cracking, damage, and missing and broken fasteners; and do a high frequency eddy current (HFEC) inspection of the fuel pump canisters for a cracked flange web, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–0084, excluding Appendix 01, dated June 28, 2005 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus Service Bulletin A310–28–2159, excluding Appendix 01, dated June 28, 2005 (for Model A310–203, –204, –221, and –222 airplanes and Model A310–304, –322, –324, and –325 airplanes), as applicable. If any crack or damage to the pump bodies is found or any missing or broken fastener is found, before further flight, replace the fuel pump with a new fuel pump in accordance with the applicable service bulletin. Repeat the detailed inspection of the pump bodies thereafter at intervals not to exceed 3,000 flight cycles. If no cracked flange web is found, repeat the HFEC inspection of the fuel pump canisters thereafter at intervals not to exceed 3,000 flight cycles. Accomplishing the replacements specified in paragraph (1) of this AD terminates the repetitive detailed and HFEC inspections.

(1) For Model A300 B4–2C, B4–103, and B4–203 airplanes: Inspect before the airplane has accumulated 19,600 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For Model A310–203, –204, –221, and –222 airplanes and Model A310–304, –322, –324, and –325 airplanes: Inspect before the airplane has accumulated 27,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

Corrective Action for Cracked Flange Web

(k) For Model A300 B4–2C, B4–103, and B4–203; Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes: If any flange web is found cracked during any HFEC inspection required by paragraph (j) of this AD, before further flight after the inspection, replace the fuel pump canister with a new fuel pump canister in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–0084, dated June 28, 2005; or Airbus Service Bulletin A310–28–2159, dated June 28, 2005, as applicable. Repeat the HFEC inspection at the applicable compliance times specified in paragraph (k)(1) or (k)(2) of this AD, until the replacements specified in paragraph (l) of this AD are accomplished.

(1) For Model A300 B4–2C, B4–103, and B4–203 airplanes: Inspect within 19,600 flight cycles after replacing the fuel pump canisters and thereafter at intervals not to exceed 3,000 flight cycles.

(2) For Model A310–203, –204, –221, and –222 airplanes and Model A310–304, –322, –324, and –325 airplanes: Inspect within 27,000 flight cycles after replacing the fuel pump canisters and thereafter at intervals not to exceed 3,000 flight cycles.

Terminating Action: Replacement of Fuel Pump Canisters

(l) For all airplanes: Within 66 months after the effective date of this AD, replace the fuel pump canisters with new reinforced fuel pump canisters, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–0085, dated July 18, 2005 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); Airbus Service Bulletin A300–28–6089, Revision 01, dated November 28, 2005 (for Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes); or Airbus Service Bulletin A310–28–2160, dated July 18, 2005 (for Model A310–203, –204, –221, and –222 airplanes and Model A310–304, –322, –324, and –325 airplanes), as applicable. Replacement of a fuel pump canister terminates the repetitive inspections required by paragraphs (f), (g), (h), (j) and (k), as applicable, for that fuel pump canister only.

Credit for Previous Service Bulletin

(m) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes and Model A300 C4–605R Variant F airplanes: Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–28–6089, dated July 18, 2005, are acceptable for compliance with the requirements of paragraph (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(o) French airworthiness directive F–2005–199, dated December 7, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use the Airbus service information identified in Table 1 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus service information	Revision level	Date
All Operators Telex A300–600–28A6075	Original	February 20, 2003.
All Operators Telex A300–28A6075	01	October 24, 2005.
Service Bulletin A300–28–0084, excluding Appendix 01	Original	June 28, 2005.
Service Bulletin A300–28–0085	Original	July 18, 2005.
Service Bulletin A300–28–6089	01	November 28, 2005.
Service Bulletin A310–28–2159, excluding Appendix 01	Original	June 28, 2005.
Service Bulletin A310–28–2160	Original	July 18, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the Airbus service information identified in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service information	Revision level	Date
All Operators Telex A300–28A6075	01	October 24, 2005.
Service Bulletin A300–28–0084, excluding Appendix 01	Original	June 28, 2005.
Service Bulletin A300–28–0085	Original	July 18, 2005.
Service Bulletin A300–28–6089	01	November 28, 2005.
Service Bulletin A310–28–2159, excluding Appendix 01	Original	June 28, 2005.
Service Bulletin A310–28–2160	Original	July 18, 2005.

(Only the first page of Airbus All Operators Telex A300–28A6075, Revision 01, dated October 24, 2005, contains the document number and issue date; no other page of this document contains this information.)

(2) On May 19, 2004 (69 FR 19756, April 14, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A300–600–28A6075, dated February 20, 2003.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 30, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5122 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24950; Directorate Identifier 2006–NM–036–AD; Amendment 39–14627; AD 2006–12–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP series airplanes. This AD requires doing inspections of the midpivot bolt and midpivot bolt access door of the spring beam of the inboard side of the outboard struts for discrepancies, installing a placard on the midpivot bolt access door, and applicable corrective actions if necessary. This AD results from reports indicating that the midpivot bolt and midpivot bolt access door of the spring beam of the inboard side of the outboard struts were installed in the incorrect position. We are issuing this AD to ensure that the subject midpivot bolts and midpivot bolt access doors are installed in the correct position. If not installed in the correct position, a midpivot bolt could be overloaded and crack or fracture, which could result in the loss of the spring load path and consequent separation of the associated

outboard strut and engine from the airplane.

DATES: This AD becomes effective June 22, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 22, 2006.

We must receive comments on this AD by August 7, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports indicating that the midpivot bolt and midpivot bolt access door of the spring beam of the inboard side of the outboard struts were installed in the incorrect position on two airplanes. On one of the airplanes, the midpivot bolts and midpivot bolt access doors had been installed during accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Service Bulletin 747–54A2157 (required by AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995)). Investigation revealed that the service bulletin specified incorrect part numbers for the midpivot bolt access doors. In addition, the production installation drawings did not provide clear instructions for installing the midpivot bolts and midpivot bolt access doors, which resulted in the discrepancies on the other airplane.

The midpivot bolt access door is attached to the skin of the inboard side of the outboard struts. A midpivot bolt access door has anti-rotation tabs that fit the slots of the midpivot bolt's head. If any midpivot bolt access door is not installed correctly or if its anti-rotation tabs are not properly aligned with the slots of the midpivot bolt's head, the midpivot bolt and its internal lubrication channel will not be in correct position. When the lubrication channel is not in the correct position, a midpivot bolt could be overloaded and crack or fracture. These conditions, if not corrected, could result in the loss of a spring beam load path and consequent separation of the associated outboard strut and engine from the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006. The service bulletin describes the inspection procedures specified in the table below. The service bulletin also describes procedures for installing a placard on the midpivot bolt access doors, and doing applicable corrective actions if necessary. The applicable corrective actions include changing or replacing any midpivot bolt access door that is damaged or installed in the incorrect position with a new or serviceable midpivot bolt access door, and under certain conditions, replacing the midpivot bolt with a new bolt. The service bulletin specifies the following compliance time depending on the airplane configuration and accumulated flight cycles:

- ''Within 24 months from the release date on this service bulletin or within 90 days from accumulating 8,000 flight cycles from the accomplishment of SB 747–54A2157, whichever occurs first;''
- ''Within 24 months from the release on this service bulletin or within 90 days from accumulating 8,000 total flight cycles, whichever occurs first;'' or
- ''Within 90 days from the release date on this service bulletin.''

INSPECTIONS

Doing—	Of—	For—
(1) A general visual inspection	The midpivot bolt access doors	The correct part number, damage (i.e., wear, nicks, gouges, elongated fastener holes, or cracks), or the correct position of its anti-rotation tabs.
(2) A general visual inspection	The anti-rotation tabs of the midpivot bolt access doors.	Damage (i.e., wear, nicks, gouges, or cracks) or any missing tab.
(3) A general visual inspection	The midpivot bolts	Correct position or damage (i.e., nicks, gouges, or cracks).
(4) An ultrasonic inspection	The midpivot bolts	Cracks.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to ensure that the subject midpivot bolts and midpivot bolt access doors are installed in the correct position. If not installed in the correct position, a midpivot bolt could be overloaded and crack or fracture, which could result in the loss of the spring load path and consequent separation of the associated outboard strut and engine from the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as described under ''Difference Between the Proposed AD and Service Bulletin.''

Difference Between the Proposed Rule and Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a report of inspection findings to Boeing, this AD will not require that action.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspection and installation of a placard would take about 6 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD would be $480 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24950; Directorate Identifier 2006–NM–036–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–12–03 Boeing: Amendment 39–14627. Docket No. FAA–2006–24950; Directorate Identifier 2006–NM–036–AD.

Effective Date

(a) This AD becomes effective June 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006.

Unsafe Condition

(d) This AD results from reports indicating that the midpivot bolt and midpivot bolt access door of the spring beam of the inboard side of the outboard struts were installed in the incorrect position. We are issuing this AD to ensure that the subject midpivot bolts and midpivot bolt access doors are installed in the correct position. If not installed in the correct position, a midpivot bolt could be overloaded and crack or fracture, which could result in the loss of the spring load path and consequent separation of the associated outboard strut and engine from the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections

(f) Do the inspections specified in Table 1 of this AD at the applicable compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006; except, where the service bulletin specifies a compliance time from the release date of the service bulletin, this AD requires compliance within the specified compliance time after the effective

date of this AD. Do the inspections in accordance with the Accomplishment Instructions of the service bulletin.

TABLE 1.—INSPECTIONS

Do—	Of—	For—
(1) A general visual inspection	The midpivot bolt access doors	The correct part number, damage (i.e., wear, nicks, gouges, elongated fastener holes, or cracks), or the correct position of its anti-rotation tabs.
(2) A general visual inspection	The anti-rotation tabs of the midpivot bolt access doors.	Damage (i.e., wear, nicks, gouges, or cracks) or any missing tab.
(3) A general visual inspection	The midpivot bolts	Correct position or damage (i.e., nicks, gouges, or cracks).
(4) An ultrasonic inspection	The midpivot bolts	Cracks.

Note 1: There is a discrepancy in Step 2 of Figure 13, Sheet 2, of Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006. The ''MORE DATA'' column of the table incorrectly describes the anti-rotation slot installation as being ''horizontal and are perpendicular to the strut skin aft edge.'' The correct description is ''vertical and are parallel to the strut skin aft edge.''

Installation of a Placard and Corrective Actions

(g) Before further flight after doing the inspections required by paragraph (f) of this AD, do the applicable actions specified in Table 2 of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006.

TABLE 2.—INSTALLATION OF A PLACARD AND CORRECTIVE ACTIONS

If—	And if—	Then—
(1) Any midpivot bolt access door has the correct part number and no damage.	Its anti-rotation tabs are present, are in the correct position, and have no damage.	Install a placard on the midpivot access door.
(2) Any midpivot bolt access door has the incorrect part number and no damage.	Its anti-rotation tabs are present, are in the incorrect position, and have no damage.	Change the midpivot access door or replace it with a new or serviceable access door, and install a placard on the midpivot access door.
(3) Any midpivot bolt access door has the incorrect part number, any damage, or any damaged or missing anti-rotation tab.	None	Replace the midpivot access door with a new or serviceable door and install a placard on the door.
(4) Any midpivot bolt is in the correct position	It has no damage	No further action is required by this paragraph.
(5) Any midpivot bolt is in the incorrect position	It has no damage	Correct the midpivot bolt position.
Any midpivot bolt has any damage	None	Replace the midpivot bolt with a new bolt.

Replacement of Midpivot Bolt

(h) If any condition in paragraph (h)(1) or (h)(2) of this AD is found on any outboard strut, within 24 months after doing the inspections required by paragraph (f) of this AD, replace the midpivot bolt of the spring beam of the inboard side of that outboard strut with a new midpivot bolt, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006.

(1) If any midpivot bolt access door of the spring beam of the inboard side of the outboard struts is found in the incorrect position (i.e., the midpivot bolt access door has the incorrect part number or its anti-rotation tabs are in the incorrect position) and if no damage is found on that bolt during any inspection required by paragraph (f) of this AD.

(2) If any midpivot bolt of the spring beam of the inboard side of the outboard struts is found in the incorrect position and if no damage is found on that bolt during any inspection required by paragraph (f) of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install, on any airplane, a midpivot access door, part number 65B89670–339, 65B89670–340, 654U6624–356, or 654U6624–357, unless it has been inspected in accordance with paragraphs (f)(1) and (f)(2) of this AD and found to have the correct part number for the door location, no damage, and no damaged or missing anti-rotation tab.

No Reporting

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747–54A2225, dated February 16, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, WA 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the

Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 26, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5125 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24424; Airspace Docket No. 06–ASO–6]

Amendment of Class D Airspace Pompano Beach; FL, Amendment of Class D Airspace, Fort Lauderdale Executive Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class D airspace at Pompano Beach, FL and Fort Lauderdale Executive Airport, FL. As a result of the decommissioning of the Pompano Beach VHF Omnidirectional Range (VOR), the legal description for the Class D airspace at Pompano Beach, FL, and Fort Lauderdale Executive Airport, FL, must be changed.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

An internal evaluation determined that the legal description for the Class D airspace at Pompano Beach, FL and Fort Lauderdale Executive Airport, FL contains reference to a line made up of radials off the Pompano Beach VOR, which has been decommissioned. This action will amend the legal description by replacing the reference to a line made up of a VOR radial, with a line now made up of geographic coordinates. Designations for Class D airspace areas extending upward from the surface of the earth are published in Paragraphs 5000 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Since this action has no impact on the users of the airspace in the vicinity of the Pompano Beach Airpark or Fort Lauderdale Executive Airport, notice and public procedure under 5 U.S.C. 553(b) are not necessary.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at Pompano Beach, FL and Fort Lauderdale Executive Airport, FL.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Pompano Beach, FL [REVISED]

Pompano Beach, Airpark, FL
(Lat. 26°14′50″ N, long. 80°06′40″ W)
Fort Lauderdale Executive Airport, FL
(Lat. 26°11′50″ N, long. 80°10′15″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Pompano Beach Airpark; excluding that portion southwest of a line between lat. 26°15′48″ N., long. 80°10′59″ W; and lat. 26°13′05″ N.; long. 80°08′36″ W and that portion south of a line 1 mile north of and parallel to the extended runway centerline of Runway 8/26 at Fort Lauderdale Executive Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Fort Lauderdale Executive Airport, FL [REVISED]

Fort Lauderdale Executive Airport, FL
(Lat. 26°11′50″ N, long. 80°10′15″ W)
Fort Lauderdale-Hollywood International Airport, FL
(Lat. 26°04′21″ N, long. 80°09′10″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Fort Lauderdale Executive Airport; excluding that portion within the Fort Lauderdale-Hollywood International Airport, FL, Class C airspace area and that portion northeast of a line between lat. 26°15′48″ N; long. 80°10′59″ W; and lat. 26°13′05″ N; long. 80°08′36″ W and that portion north of a line 1 mile north of and parallel to the extended runway centerline of Runway 8/26 at Fort Lauderdale Executive Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia on May 31, 2006.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–5185 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24391; Airspace Docket No. 06–ASO–5]

Removal of Class D and E Airspace; Roosevelt Roads, PR Amendment of Class E Airspace; Isla de Vieques, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will remove the Class D and E airspace at Roosevelt Roads, PR, and amend the Class E airspace at Isla de Vieques, PR. The Roosevelt Roads Naval Station, Ofstie Field, PR, is permanently closed and no longer operational. The closure necessitates the removal of Class D and E airspace. The removal of Class E airspace at Roosevelt Roads, PR, requires the amendment of Class E airspace at Isla de Vieques, PR, since it is included as part of the Roosevelt Roads, PR, Class E airspace.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On January 17, 2003, the Roosevelt Roads Naval Station, Ofstie Field, PR, was permanently closed and airport operations terminated. The closure, therefore, requires the removal of Class D and E5 airspace. Since the Isla de Vieques, PR, Class E5 airspace is included as part of the Roosevelt Roads, PR Class E5 airspace, the Isla de Vieques, PR, Class E5 airspace requires an amendment. This rule becomes effective on the date specified in the ''Effective Date'' section. Since this action eliminates the impact of controlled airspace on users of airspace in the vicinity of Roosevelt Roads, PR, notice and public procedure under 5 U.S.C. 553(b) are not necessary. Designations for Class D airspace and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 5000 and 6005 respectively of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D and Class E5 airspace at Roosevelt Roads, PR, and amends Class E5 airspace at Isla de Vieques, PR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO PR D Roosevelt Roads, PR [Remove]

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO PR E5 Roosevelt Roads, PR [Remove]

* * * * *

ASO PR E5 Isla de Vieques, PR [Revised]

Antonio Rivera Rodriquez Airport, PR
Lat. 18°08′05″ N, long. 65°29′37″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.5-mile radius of Antonio Rivera Rodriquez Airport.

* * * * *

Issued in College Park, Georgia, on May 31, 2006.

Mark D. Ward

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–5184 Filed 6–6–06; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24064; Airspace Docket No. 06–AWP–3]

RIN 2120–AA66

Revision of Class E Airspace; Vandenberg AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Vandenberg AFB, CA. This airspace change places aircraft in controlled airspace from final descent to runway and protects Category E aircraft while conducting a circling approach to land.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Airspace Specialist, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

During a review of the Class E5 700 foot airspace at Vandenberg AFB, CA, it was determined that additional controlled airspace was needed for Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Procedures. Class E5 airspace areas are primarily designated to provide

additional controlled airspace ancillary to a surface area to protect instrument operations for the primary airport, without imposing additional communications burdens on airspace users. This action is necessary at Vandenberg AFB to provide controlled airspace for Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Procedures. Generally, Category E aircraft are very large and/or high performance. These aircraft require additional airspace when conducting circling maneuvers.

On March 24, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Vandenberg AFB, CA (71 FR 14830). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received, therefore, this revision is the same as that proposed in the notice.

Class E5 airspace areas are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document will be published subsequently in the Order.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Vandenberg AFB, CA. The FAA is taking this action to provide additional controlled airspace for Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Procedures. This airspace change places aircraft in controlled airspace from final descent to runway and protects Category E aircraft while conducting a circling approach to land.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP CA E5 Vandenberg AFB, CA [Revised]

Vandenberg AFB Airport
(Lat. 34°43′47″ N, Long. 120°34′37″ W).

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of the Vandenberg AFB airport and within 1.8 miles each side of the Vandenberg AFB ILS localizer southeast course, extending from 7.8 miles to 10.3 miles southeast of the Vandenberg AFB airport, excluding the Vandenberg Class D airspace, the Santa Maria Class D airspace, the Lompoc Class E4 surface area airspace, and the Lompoc Class E 700 foot airspace.

* * * * *

Issued in Los Angeles, California, on June 1, 2006.

Leonard A. Mobley,

Manager, Airspace Branch, AWP–520, Western Terminal Operations.

[FR Doc. 06–5159 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24686; Airspace Docket No. 06–ASO–7]

Establishment of Class E Airspace; Nicholasville, KY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final rule (FAA–2005–23075; 05–ASO–12), which was published in the **Federal Register** of February 28, 2006, (71 FR 9908), establishing Class E airspace at Nicholasville, KY. This action corrects an error in the geographic coordinates for the Class E5 airspace at Nicholasville, KY.

Effective Dates: 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 71–39, Airspace Docket No. FAA–2005–23075; Airspace Docket No. 05–ASO–12, published on February 28, 2006, (71 FR 9908), established Class E5 airspace at Nicholasville, KY. An error was discovered in the geographic coordinates describing the Class E5 airspace area. What should have been latitude 37°52′17″ N, longitude, 84°36′38″ W, was publish as latitude 37°52′16″ N, longitude. 84°36′39″W. This action corrects that error.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which identifies an incorrect geographical position for the location of the Class E5 airspace area. Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the

Class E5 airspace area at Nicholasville, KY, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the Federal Register on March 31, 2000, (65 FR 17133), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Nicholasville, KY [Corrected]

Lucas Field Airport, KY
(Lat. 37°52′17″N, long. 84°36′38″W)

That airspace extending upward from 700 feet above the surface within a 6.5 - radius of Lucas Field Airport; excluding that airspace within the Lexington, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 31, 2006.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–5186 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22024; Airspace Docket No. 06–AAL–08]

RIN–2120–AA66

Modification of Offshore Airspace Area: Control 1487L; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Control 1487L offshore airspace area in the vicinity of the Sitka Rocky Gutierrez Airport, Sitka, AK; Merle K. Mudhole Smith Airport, Cordova, AK; and Middleton Island Airport, Middleton Island, AK, by lowering the affected airspace floors associated within Control 1487L. The FAA is taking this action to provide additional controlled airspace for the safety of aircraft executing instrument flight rules (IFR) operations at the Sitka Rocky Gutierrez Airport, Merle K. Mudhole Smith Airport, and Middleton Island Airport.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 6, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Control 1487L offshore airspace area in Alaska (71 FR 17389). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Areas listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Control 1487L offshore airspace area, AK, by lowering the floor from 5,500 feet mean sea level (MSL) to as low as 700 feet MSL in the vicinity of the Sitka Rocky Gutierrez Airport, Merle K. Mudhole Smith Airport and Middleton Island Airport. This action will provide offshore airspace in the vicinity of Merle K. Mudhole Smith Airport, AK, by lowering the offshore airspace floor from 5,500 feet MSL to 1,200 feet MSL. Additionally, this action will re-designate the existing Class E airspace at Anchorage, AK, by extending Control 1487L airspace area westward to the 12-mile shoreline limit within the 149.5-mile radius associated with Anchorage, AK, Class E airspace, and clarify offshore airspace descriptions within already established domestic Class E airspace at Anchorage and Cordova. This action will provide additional controlled airspace for the safety of aircraft executing IFR operations at the Sitka Rocky Gutierrez, Merle K. Mudhole Smith, and Middleton Island Airports, and will correctly designate the existing Class E airspace for Anchorage and Cordova, AK.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, the notice of this action is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly,

and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore airspace areas.

* * * * *

Control 1487L [Amended]

That airspace extending upward from 8,000 feet MSL within 149.5 miles of the Anchorage VOR/DME clockwise from the 090° radial to the 185° radial of the Anchorage VOR/DME; and that airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′35″ N., long. 147°16′04″ W.; thence counterclockwise via the arc of a 149.5-mile radius centered on the Anchorage VOR/DME to the intersection of the 149.5-mile radius arc and a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32′57″ N., long. 133°11′29″ W.; to lat. 54°00′00″ N., long. 136°00′00″ W.; to lat. 52°43′00″ N., long. 135°00′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33′25″ N., long. 141°03′22″ W.; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56′18″ N., long. 138°45′19″ W.; to lat. 58°40′00″ N., long. 139°30′00″ W.; to lat. 59°00′00″ N., long. 141°10′00″ W.; to the point of beginning, and that airspace within 85 miles of the Biorka Island VORTAC, and that airspace within 42 miles of the Middleton Island VOR/DME, and that airspace within 30 miles of the Glacier River NDB; and that airspace extending upward from 700 feet MSL within 14 miles of the Biorka Island VORTAC and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending to 16 miles southwest of the VORTAC. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC on May 31, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–8848 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23708; Airspace Docket No. 06–AAL–1]

RIN–2120–AA66

Modification of Control 1234L Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Control 1234L offshore airspace area in Alaska. Specifically, this action modifies Control 1234L in the immediate vicinity of the Saint Paul Island Airport, AK, by lowering the airspace floor from 2,000 feet above ground level (AGL) to 700 AGL. Additionally, outside the vicinity of the airport this action lowers the airspace floor from 2,000 AGL to 1,200 feet AGL within a 73-mile radius of the St. Paul Island Airport. The FAA is taking this action to provide additional controlled airspace for aircraft instrument flight rules (IFR) operations at the St. Paul Island Airport.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 13, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Control 1234L offshore airspace area in Alaska (71 FR 19148). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Areas listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Control 1234L Offshore Airspace Area, AK by lowering the floor to 700 feet AGL in the vicinity of the St. Paul Island Airport, AK, and 1,200 feet AGL within a 73-mile radius of the airport. The action is to establish controlled airspace to support IFR operations at the St. Paul Island Airport, Alaska. The FAA Instrument Flight Procedures Production and Maintenance Branch developed new instrument approach procedures for the St. Paul Island Airport. New controlled airspace extending upward from 700 feet AGL and 1,200 feet AGL in international airspace is created by this action.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action''

under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, the notice of this action is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore airspace areas.

* * * * *

Control 1234L [Amended]

That airspace extending upward from 700 feet above the surface within 8 miles west and 6 miles east of the 360° bearing from the St. Paul Island Airport to 14 miles north of the St. Paul Island Airport, and within 6 miles west and 8 miles east of the 172° bearing from the St. Paul Island Airport to 15 miles south of the St. Paul Island Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Paul Island Airport, and the airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., south along long. 160°00′00″ W. until it intersects the Anchorage Air Route Traffic Control Center boundary; thence southwest, northwest, north, and northeast along the Anchorage Air Route Traffic Control Center boundary to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC on May 31, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–8850 Filed 6–6–06; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

RIN 0910–AC25

[Docket No. 2003N–0355]

Medical Devices; Exception From General Requirements for Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this interim final rule to amend its regulations to establish a new exception from the general requirements for informed consent, to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances. The agency is taking this action because it is concerned that, during a potential terrorism event or other potential public health emergency, delaying the testing of specimens to obtain informed consent may threaten the life of the subject. In many instances, there may also be others who have been exposed to, or who may be at risk of exposure to, a dangerous chemical, biological, radiological, or nuclear agent, thus necessitating identification of the agent as soon as possible. FDA is creating this exception to help ensure that individuals who may have been exposed to a chemical, biological, radiological, or nuclear agent are able to benefit from the timely use of the most appropriate diagnostic devices, including those that are investigational.

DATES: This rule is effective June 7, 2006. Submit written or electronic comments by August 7, 2006.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia M. Gaffey, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0496, ext. 109.

SUPPLEMENTARY INFORMATION:

I. Background

U.S. Federal, State, and local authorities have developed and are refining a comprehensive public health plan to prepare for, and respond to, the threat of terrorism and other potential public health emergencies. A critical element in responding to such emergencies is the ability to correctly and quickly identify the chemical, biological, radiological, or nuclear agents that may have caused, or may cause, human disease or injury. The devices included within the scope of this rule are those for the detection of agents that have the potential to be used in acts of chemical, biological, radiological, or nuclear terrorism, or that can lead to other potential public health emergencies. Examples of these agents include *Bacillus anthracis* (anthrax); *Yersinia pestis*(plague); ricin (a lethal chemical agent); and cobalt-60, a radiological material that could be used to build a dirty bomb. Although it is not possible to provide an all inclusive list of etiological agents that would be identified under conditions that meet the criteria described in this rule, critical biologic agents such as Category A Diseases/Agents (available at *http://www.bt.cdc.gov/agent/agentlist-category.asp*) or specific chemical agents (*http://www.bt.cdc.gov/chemical/*) that are used by the federal government for regulatory and emergency planning purposes, may serve as examples of the types of agents within the scope of this rule. Select agents as defined in 42 CFR 73.1, that would suggest a terrorism event or other public health emergency, may be considered as other examples. Most in vitro diagnostic devices used to identify such agents have been developed (and more are under development) by the Centers for Disease Control and Prevention (CDC), and the Department of Defense (DOD). Some nongovernment entities are also developing such in vitro diagnostic devices. In most instances, these are the only devices available to provide timely diagnostic information on the identity of these agents, although they may not yet have been approved or cleared by FDA.

Many of these devices have not yet been approved or cleared by FDA because clinical studies involving devices used for the identification of such agents frequently cannot be conducted. Studies may not be possible because natural exposure to these agents is rare or never occurs, and there may not be enough exposed subjects to enroll in a study. Studies also may not be possible because it is not ethical to expose healthy human volunteers to a life-threatening toxic substance or organism to determine the ability of the unapproved diagnostic device to correctly identify the agent. While these unapproved devices may not have been evaluated on specimens collected from human subjects, testing (procedural) validation and other analytical studies generally have been conducted (or are being conducted) by the sponsors.

Some of these devices may be under clinical investigation, while others may not have reached that stage of development. For purposes of this rule we are considering the term ''investigational device'' to include those devices being evaluated in a clinical investigation as well as those that are undergoing preclinical and/or analytical evaluation.

Given all of these facts, the agency believes that the use of these investigational diagnostic devices in limited circumstances is justified when the devices are needed to identify the causative agent in a potential public health emergency and thereby enable authorities to promptly provide appropriate care to those exposed, and to provide preventive therapies (if available) to others in the affected geographic region(s).

Under FDA's regulations informed consent must be obtained before an investigational in vitro diagnostic device may be used unless an exception under part 50 (21 CFR part 50) applies. Institutional review board (IRB) review and approval is also required, unless an exception under part 56 (21 CFR part 56) applies. Under the IRB regulations investigations may be reviewed by an IRB through a joint review process, reliance upon the review of another qualified IRB (e.g., at the research site, a central IRB, an independent or commercial IRB), or similar arrangements. (See 21 CFR 56.114.) Therefore, absent an applicable exception, investigational in vitro diagnostic devices used to identify chemical, biological, radiological, or nuclear agents in human specimens may only be used after obtaining informed consent from each subject whose specimen is tested, and with IRB review and approval.

If a terrorism event (such as dissemination of *B. anthracis* spores in the mail system in 2001) or other potential public health emergency occurs (such as the multistate outbreak of monkeypox in persons exposed to pet prairie dogs in 2003), the timely identification of the etiological agent may be critical to the lives of the affected subjects as well as to the general population who may also have been exposed. The risk to subjects and others exposed could be life-threatening, and difficult to assess and address without the use of these investigational devices. Identification of the agent could be delayed significantly or precluded while the investigator seeks to obtain informed consent. Also, in some cases, storing the specimen while awaiting consent could have an adverse effect on the specimen and compromise the test results. The consequences of delay could be catastrophic for subjects and for public health in general.

Consider the following possible scenario in which a terrorist event is not suspected until a public health laboratory cultures an unusual or rare organism. When a patient presents to a health care facility with symptoms suggesting a systemic microbial infection, blood and other specimens are typically collected to determine the identity of the causative organism. The clinical laboratory would determine that the specimens contain an unusual organism that cannot be identified by the tests available in that laboratory. Because many clinical laboratories do not have the capability or resources to identify unusual organisms or those to which humans are rarely exposed naturally, the organism (culture isolate) or collected specimen would be referred to a public health laboratory. The public health laboratory would use in vitro diagnostic devices, including those that are investigational, to try to identify the cultured organism or detect its presence directly in the specimen.

In this scenario, the referring laboratory would not have obtained informed consent when the specimen was collected because the person directing that the specimen be collected would not have known at the time that the infecting organism could be reliably identified only by using an investigational device. To obtain informed consent would require a number of steps and introduce unacceptable delays. The public health laboratory would have to contact the referring laboratory that collected the specimen or the physician who ordered the cultures in order to locate the subject (or the subject's legally authorized representative). Once located, the subject or the subject's legally authorized representative would need to be contacted, provided the informed consent information, and given the opportunity to ask questions and sign the informed consent document. The referring laboratory or health care facility would then have to notify the public health laboratory that informed consent had been obtained.

Only at that point could testing be performed.

The scenario described in the previous paragraph is one example and is not the only set of circumstances in which this exception to informed consent might apply. The new exception would also apply if the event were not terrorism-related but was another type of potential public health emergency, such as sporadic outbreaks resulting from the spread of an emerging infectious agent that has the potential to cause a life-threatening situation, as in the case of Severe Acute Respiratory Syndrome (SARS) or the potential for a pandemic influenza virus strain. This rule would not apply in a situation which is not life-threatening or where there is a cleared or approved available alternative method of diagnosis that provides an equal or greater likelihood of saving the life of the subject, such as the in vitro diagnostic devices for identifying agents causing certain known sexually transmitted diseases such as *Chlamydia trachomatis*, *Neisseria gonorrhoeae*, human papillomavirus, human immunodeficiency virus, etc. The emergency nature of the event may or may not be suspected at the time the specimen is collected, and the laboratory involved may or may not be a public health laboratory. Finally, even if the nature of the event is suspected, the person collecting the specimen may not know the investigational status of the in vitro diagnostic device and thus would not know that informed consent should be obtained from the patient. These variables are examples and are not meant to be the exclusive circumstances in which this rule might apply. The exception has been constructed in somewhat general terms because we can not anticipate the circumstances of every emergency involving a chemical, biological, radiological, or nuclear agent that may occur.

The process for obtaining informed consent in the scenarios described previously would introduce dangerous delays or could compromise the effectiveness of the testing. This process would delay not only the diagnosis and possibly lifesaving treatment of the subject, but would also delay recognition of a terrorism event or other public health emergency, with serious public health consequences.

To avoid potentially dangerous delays in using investigational in vitro diagnostic devices to identify these agents, FDA is creating a new limited exception, within the restrictions of section 520(g)(3)(D) of the act (21 U.S.C. 360j(g)(3)(D)), from the requirement of informed consent. The exception applies to investigational in vitro diagnostic tests used to identify agents, when a specimen is collected without the recognition that an investigational test will have to be used.

II. Current Exceptions From the General Requirements for Informed Consent

Two exceptions from the general requirements for informed consent are described in § 50.23. Section 50.23(a) provides that informed consent shall be deemed feasible unless, before use of the test article, both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following: The human subject is confronted by a life-threatening situation necessitating the use of the test article; informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject; time is not sufficient to obtain consent from the subject's legally authorized representative; and there is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject. An inability to communicate in the context of § 50.23(a) means that the subject is in a coma or unconscious. (See 46 FR 8942 at 8946, January 27, 1981). Section 50.23(d) states that, under 10 U.S.C. 1107(f), the President may waive the prior informed consent requirement for the administration of an investigational new drug to armed forces personnel in connection with the personnel's participation in a particular military operation. The waiver is based on a finding by the President that obtaining consent is not feasible, is contrary to the best interests of the military personnel, or is not in the interests of national security (64 FR 54180, October 5, 1999). Currently FDA is re-examining this regulation in light of the recent amendment of 10 U.S.C. 1107 by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 which changed the criteria that may be used by the President for waiving informed consent.

In addition, § 50.24 provides an exception from the informed consent requirements for emergency research. Section 50.24 is intended to permit the study of potential improvements in the treatment of life-threatening conditions where current treatment is unproven or unsatisfactory, in order to improve interventions and patient outcomes. The exception applies to limited research activities involving human subjects who are in need of emergency medical intervention, but cannot give informed consent because of their medical condition. (See 61 FR 51498 at 51499, October 2, 1996.) Section 50.24 is intended to be used in circumstances that are different than those described in this rule, i.e., planned clinical research of a specific investigational article that will be studied in a specific class of patients.

The situation described in this document does not meet the requirements of the current exceptions from the general requirements for informed consent in § 50.23. It does not satisfy the requirements of § 50.23(a) because the subject may be physically able to provide informed consent. It does not satisfy the requirements of § 50.23(d) because that exception applies only to administration of investigational drugs to military personnel by DOD. In addition, Section 50.24 is generally not applicable because, in the situations addressed in that section, subjects are not able to consent because of their medical condition. In contrast, in the situations addressed in this document, it is not the condition of the subject that prevents the subject from giving informed consent, but rather the fact that, by the time it is known that the laboratory needs to use an investigational device to identify the etiological agent, the subject is physically separated from the specimen, and there is not enough time to locate the subject or the subject's legally authorized representative and obtain informed consent.

III. Revisions

FDA is creating a new exception from the general requirements for informed consent to address situations associated with preparing for, and responding to, chemical, biological, radiological, or nuclear terrorism or other potential public health emergencies. The exception applies when investigational in vitro diagnostic devices are used and the investigator is unable to obtain timely informed consent from subjects (or their legally authorized representatives) whose specimens are being tested. The new limited exception is applicable only when it is not feasible to obtain informed consent because, at the time the specimen is collected, it may not be known that an investigational device would need to be used on that specimen, and delay in diagnosis could be life-threatening to the subject.

This exception is contingent on several determinations that must be made before using the investigational device, and later certified in writing, by

both the investigator and, if time permits, by a physician who is not otherwise participating in the clinical investigation. These determinations are:

- The human subject is confronted with a life-threatening situation necessitating the use of the investigational in vitro diagnostic device;
- Informed consent cannot be obtained from the subject because:

1. There was no reasonable way for the person directing that the specimen be collected to know at the time the specimen was collected, that there would be a need to use the investigational device on that specimen and;

2. Time is not sufficient to obtain consent from the subject without risking the life of the subject;

- Time is not sufficient to obtain consent from the subject's legally authorized representative; and
- There is no available alternative approved or cleared method of diagnosis to identify the chemical, biological, radiological, or nuclear agent that provides an equal or greater likelihood of saving the life of the subject.

Under this interim final rule, the investigator has 5 working days after using the investigational device to submit to the IRB these determinations as well as the review and evaluation of an independent licensed physician. However, if, in the opinion of the investigator, there is not sufficient time to obtain the determination of an independent licensed physician in advance of using the investigational device, the independent physician is required to review and evaluate the determinations of the investigator and the investigator is required to submit this documentation to the IRB within 5 working days after using the device.

Until the investigational in vitro diagnostic device is used, it will not be known whether there has been actual exposure to a chemical, biological, radiological, or nuclear agent and whether that agent is life-threatening. Nonetheless, FDA believes the possibility of such exposure itself represents a life-threatening situation for the subject because, until the investigational in vitro diagnostic device is used, it is unknown to what agent, if any, the subject has been exposed or how the subject should be treated.

FDA expects that in accordance with routine clinical practice, the investigator will provide the test results obtained using the investigational in vitro diagnostic device to the subject's health care provider and that the results will be used in the clinical management of the human subject. It is possible that, in certain circumstances, the test results will also be reported to the appropriate public health authorities. This reporting will occur when appropriate and/or required by State or Federal law. Under the regulation, at the time the result of the test is reported (whether to the subject's health care provider and/or to the appropriate public health officials), the investigator is required to disclose the investigational status of the device used to perform the diagnostic test.

The investigator is also responsible for providing the IRB with the information required in § 50.25, the elements of informed consent, and the procedures that will be used to provide this information to each subject or to the subject's legally authorized representative. Section 50.25(a) requires that the following information be provided to each subject:

- A statement that the study involves research and an explanation of its purposes and the expected duration of the subject's participation;
- A description of the procedures to be followed, and identification of any procedures which are experimental;
- A description of any reasonably foreseeable risks or discomforts to the subject;
- A description of any benefits to the subject or others which may be reasonably expected from the research;
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;
- A statement of the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that FDA may inspect the records;
- For more than minimal risk research, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained; and
- An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.

Section 50.25(b) requires this additional information when it is appropriate:

- A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;
- Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;
- Any additional costs to the subject that may result from participation in the research;
- The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
- A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation; and
- The approximate number of subjects involved in the study. This information will be provided at the time the test results are sent to the subject's health care provider and to public health authorities, if public health reporting is required by Federal, State, or local law.

In this rule, we are requiring investigators to provide all information described in § 50.25 except the information in § 50.25(a)(8) concerning voluntary participation. Normally under the regulations subjects voluntarily agree to participate in research before the research begins. In the circumstances covered by this rule, an individual provides a specimen for diagnostic testing without the knowledge of either the patient or the physician that an investigational in vitro diagnostic (IVD) will be necessary. When the investigational IVD is used at a setting remote from the patient and treating physician in this case, it is not practicable (because of the time and distance involved to contact the patient or the patient's legally authorized representative) to obtain consent for the use of the device. Under this rule, by the time the patient is informed that an investigational device has been used to test his/her specimen, the investigation is already underway, and the time at which a subject would normally consent to voluntary participation has past. Therefore, the investigator is not responsible for providing the information described in § 50.25(a)(8) concerning voluntary participation. In addition, subjects or their legally authorized representatives will not be entitled to withdraw previously collected data from the research database, because it is critical that FDA obtain and have available for review all data on the investigational in vitro diagnostic device's use in order to determine whether it is safe and effective. As a result, it is the responsibility of the IRB to ensure the adequacy of the information required in § 50.25 (except for the requirements

under § 50.25(a)(8)) concerning voluntary participation) and to ensure that procedures for providing this information to the subject or the subject's legally authorized representative are in place. The IRB is responsible for this even if an exception under § 56.104(c) exists under which the emergency use of the test article would be reported to the IRB within 5 working days. We recognize that, in this situation, the IRB may be delayed in assuring that these procedures are in place.

IV. Applicability of 45 CFR Part 46 and Other Legal Requirements

According to the Office for Human Research Protection (OHRP) in the Department of Health and Human Services (HHS), some of the activities described in this rule may also constitute non-exempt human subjects research within the meaning of 45 CFR part 46. In particular, the use of the investigational in vitro diagnostic device on individually identifiable human specimens as described in this rule would not be human subjects research under 45 CFR part 46, while the analysis of the individually identifiable data obtained from the use of the investigational device to determine the safety and effectiveness of the device would be considered human subject research under 45 CFR part 46. If the analysis of individually identifiable data involves non-exempt human subjects research that is conducted or supported by HHS, the institution conducting the analysis must obtain an OHRP-approved assurance. In addition, this means that this research activity, if not exempt, i.e., the analysis of the individually identifiable data, must be reviewed prospectively by an IRB and must be conducted with the informed consent of the subjects unless waived. OHRP expects that IRBs will often find that informed consent may be waived under 45 CFR 46.116(d) for the analysis of the individually identifiable data obtained through the use of the investigational device. OHRP is issuing guidance regarding this issue simultaneously with the publication of this interim final rule which can be found at *http://www.hhs.gov/ohrp/policy/index.html*. Those interested in seeking additional information concerning the application of the regulations at 45 CFR part 46 should contact OHRP. We note that research conducted or supported by another department or agency may be subject to other laws and regulations. Sponsors should check to see if they are complying with all applicable requirements.

V. Legal Authority

FDA believes the statutory authority provided in section 520(g)(3)(D) of the act permits this limited exception to obtaining informed consent for the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents in potential terrorism events or other potential public health emergencies. Section 520(g)(3)(D) of the act specifically states when an exception from informed consent is permissible. Under section 520(g)(3)(D) of the act, informed consent is required unless the investigator determines the following in writing: (1) There exists a life threatening situation involving the human subject of such testing which necessitates the use of such device; (2) it is not feasible to obtain informed consent from the subject; and (3) there is not sufficient time to obtain such consent from the subject's legally authorized representative. Further, a licensed physician uninvolved in the testing must agree with this three-part determination in advance of using the device unless use of the device is required to save the life of the human subject of such testing, and there is not sufficient time to obtain such concurrence.

As noted earlier, FDA believes that, if the presence of an agent is suspected, there exists a life-threatening situation for the subjects whose specimens have been sent to laboratories. Until the laboratory identifies the agent to which the subject has been exposed or by which the subject has been infected, specific treatment cannot be provided. However, this limited exception applies only if it is also not feasible to obtain informed consent because there is an inability to communicate, in a timely manner, with the subject or the subject's legally authorized representative, and there was no reasonable way to know, at the time the specimen was collected, that there would be a need to use the investigational device on that specimen. In such a situation, the act would permit a limited exception to obtaining informed consent.

In accordance with section 521 of the act (21 U.S.C. 360k), state or local requirements that are different from, or in addition to, the requirements in this rule are expressly preempted. This rule establishes a new exception from the general requirements for informed consent, to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances. Consequently, State and local laws that require that informed consent be obtained in those situations are preempted.

VI. Issuance of an Interim Final Rule and Effective Date

FDA is proceeding without notice and comment rulemaking because the Nation needs to have this regulation in place immediately to be prepared to deal effectively with a terrorism event or other potential public health emergency. Under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), FDA finds for good cause that prior notice and comment on this rule are impracticable and contrary to the public interest. The absence of this exception was an impediment to the most efficient and effective public health response to the SARS outbreak. We do not want the absence of such an exception to be an impediment to our response to an outbreak of Avian flu or some other public health emergency. It is critical that FDA act quickly now to ensure that, in the future, individuals who may have been exposed to a chemical, biological, radiological, or nuclear agent have the benefit of the timely use of the most appropriate diagnostic devices, including those that are investigational. For the same reasons, the agency is making this interim final rule effective as of the date of publication.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this interim final rule is of a type that does not, individually or cumulatively, have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of this interim final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the rule is not an economically significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this interim final rule provides an exception from an otherwise applicable requirement for investigators, FDA believes that it does not impose a significant burden. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this interim final rule to result in any 1-year expenditure that would meet or exceed this amount.

IX. Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The information collection requirements for this interim final rule have been approved under the emergency processing provisions of the PRA. The assigned OMB approval number for this collection of information is 0910–0586. This approval expires on November 30, 2006.

A description of these provisions is given in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility: (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Informed Consent: Investigational In Vitro Diagnostic Device To Identify a Chemical, Biological, Radiological, or Nuclear Threat Agent

Description: This interim final rule amends FDA's informed consent regulation to provide an exception from the general requirement to obtain informed consent from the subject of an investigation involving an unapproved or not cleared in vitro diagnostic device intended to identify a chemical, biological, radiological, or nuclear agent. For the exception to apply, it is necessary for the investigator and an independent licensed physician to make the determination and certify in writing certain facts concerning the need for use of the investigational in vitro diagnostic device without informed consent. The investigator submits this written certification to the IRB. When reporting the test results to the subject's health care provider and, possibly, to the appropriate public health authorities, the investigator must disclose the investigational status of the in vitro diagnostic device. The investigator must also provide the IRB with the information required in § 50.25 and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative at the time the test results are provided to the subject's health care provider and possibly to the public health authorities.

Description of Respondents: Clinical laboratories, physicians.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED AVERAGE ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
50.23(e)(1) and (e)(2)	150	3	450	2	900
50.23(e)(4)	150	3	450	1	450
Total Hours					1,350

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA is adding § 50.23(e)(1) to provide an exception to the general rule that informed consent is required for the use of an investigational in vitro diagnostic device for the purpose of preparing for and responding to a chemical, biological, radiological, or nuclear terrorism event or other public health emergency, if the investigator and an independent licensed physician make the determination and later certify in writing that: (1) There is a life-threatening situation necessitating the use of the investigational device; (2) obtaining informed consent from the subject is not feasible because there was no way to predict the need to use the investigational device when the specimen was collected, and there is not sufficient time to obtain consent from the subject or the subject's legally authorized representative; and (3) no satisfactory alternative device is available. Under this interim final rule these determinations are made before the device is used, and the written certifications are made within 5 working days after the use of the device. If use of the device is necessary to preserve the life of the subject and there is not sufficient time to obtain the determination of the independent licensed physician in advance of using the investigational device, § 50.23(e)(2) provides that the certifications must be made within 5 working days of use of the device. In either case, the certifications are submitted to the IRB within 5 working days of the use of the device. From its knowledge of the industry, FDA estimates that there are approximately 150 laboratories that

could perform this type of testing. FDA estimates that in the United States each year there are approximately 450 naturally occurring cases of diseases or conditions that are identified in CDC's list of category 'A' biological threat agents. The number of cases that would result from a terrorist event or other public health emergency is uncertain. Based on its knowledge of similar types of submissions, FDA estimates that it will take about 2 hours to prepare each certification.

Section 50.23(e)(4) provides that an investigator must disclose the investigational status of the device and what is known about the performance characteristics of the device at the time test results are reported to the subject's health care provider and public health authorities. Under this interim final rule, the investigator provides the IRB with the information required by § 50.25 and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative. Based on its knowledge of similar types of submissions, FDA estimates that it will take about 1 hour to prepare this information and submit it to the health care provider and, where appropriate, to public health authorities.

X. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132 on Federalism (64 FR 43255, August 10, 1999). FDA has concluded that the rule raises federalism implications because, in accordance with section 521 of the act, this rule preempts State and local laws that require that informed consent be obtained before an investigational in vitro diagnostic device may be used to identify a chemical, biological, radiological, or nuclear agent in suspected terrorism events and other potential public health emergencies that are different from, or in addition to, the requirements of this regulation.

In accordance with the Executive order, preemption of State law is restricted to the minimum level necessary to achieve the objective of the statute to protect the public health by ensuring that individuals who may have been exposed to such an agent are able to benefit from the timely use of the most appropriate diagnostic devices, including those that are investigational. Also in accordance with the Executive order, officials at FDA consulted with the States on the effect of this rule on State law.

The new exception from informed consent is available in a very narrowly defined set of circumstances. Under these circumstances, a specimen already would have been taken from the individual. The individual would not be subjected to any further specimen collection or other procedure in order for the investigational device to be used on the specimen. In addition, in the circumstances in which the exception would apply, it is not only the health of the individual from whom the specimen was taken that would be at risk. It is possible that other people, perhaps many other people, would have been exposed to the chemical, biological, radiological, or nuclear agent as well.

In conclusion, the agency believes that it has complied with all of the applicable requirements under Executive Order 13132 and has determined that this final rule is consistent with the Executive order.

XI. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

XII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this interim final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 50 is amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

■ 1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 2. Section 50.23 is amended by adding paragraph (e) to read as follows:

§ 50.23 Exception from general requirements.

(e)(1) Obtaining informed consent for investigational in vitro diagnostic devices used to identify chemical, biological, radiological, or nuclear agents will be deemed feasible unless, before use of the test article, both the investigator (e.g., clinical laboratory director or other responsible individual) and a physician who is not otherwise participating in the clinical investigation make the determinations and later certify in writing all of the following:

(i) The human subject is confronted by a life-threatening situation necessitating the use of the investigational in vitro diagnostic device to identify a chemical, biological, radiological, or nuclear agent that would suggest a terrorism event or other public health emergency.

(ii) Informed consent cannot be obtained from the subject because:

(A) There was no reasonable way for the person directing that the specimen be collected to know, at the time the specimen was collected, that there would be a need to use the investigational in vitro diagnostic device on that subject's specimen; and

(B) Time is not sufficient to obtain consent from the subject without risking the life of the subject.

(iii) Time is not sufficient to obtain consent from the subject's legally authorized representative.

(iv) There is no cleared or approved available alternative method of diagnosis, to identify the chemical, biological, radiological, or nuclear agent that provides an equal or greater likelihood of saving the life of the subject.

(2) If use of the investigational device is, in the opinion of the investigator (e.g., clinical laboratory director or other responsible person), required to preserve the life of the subject, and time is not sufficient to obtain the independent determination required in paragraph (e)(1) of this section in advance of using the investigational device, the determinations of the investigator shall be made and, within 5 working days after the use of the device, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation.

(3) The investigator must submit the documentation required in paragraph (e)(1) or (e)(2) of this section to the IRB within 5 working days after the use of the device.

(4) An investigator must disclose the investigational status of the in vitro diagnostic device and what is known

about the performance characteristics of the device in the report to the subject's health care provider and in any report to public health authorities. The investigator must provide the IRB with the information required in § 50.25 (except for the information described in § 50.25(a)(8)) and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative at the time the test results are provided to the subject's health care provider and public health authorities.

(5) The IRB is responsible for ensuring the adequacy of the information required in section 50.25 (except for the information described in § 50.25(a)(8)) and for ensuring that procedures are in place to provide this information to each subject or the subject's legally authorized representative.

(6) No State or political subdivision of a State may establish or continue in effect any law, rule, regulation or other requirement that informed consent be obtained before an investigational in vitro diagnostic device may be used to identify chemical, biological, radiological, or nuclear agent in suspected terrorism events and other potential public health emergencies that is different from, or in addition to, the requirements of this regulation.

Dated: May 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8790 Filed 6–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 2006N–0182]

Medical Devices; Ear, Nose, and Throat Devices; Classification of Olfactory Test Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the olfactory test device into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Olfactory Test Device.'' The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that is the special control for the device.

DATES: This final rule becomes effective July 7, 2006. The classification was effective March 27, 2006.

FOR FURTHER INFORMATION CONTACT: Eric A. Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. What is the Background of This Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on May 27, 2004, classifying the HealthCheck™ Home Test for Loss of the Sense of Smell into class III, because it was not substantially equivalent to a class I or class II device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On July 28, 2004, FMG Innovations, Inc., submitted a request for classification of the HealthCheck™ Home Test for Loss of the Sense of Smell under section 513(f)(2) of the act (Ref. 1). The manufacturer recommended that the device be classified into class I.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. In general, devices are to be classified into class I if general controls, by themselves are sufficient to provide reasonable assurance of safety and effectiveness. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the HealthCheck™ Home Test for Loss of the Sense of Smell should be classified into class II with the establishment of special controls. FDA believes that special controls, in addition to general controls, are necessary to provide reasonable assurance of safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

The device is assigned the generic name ''olfactory test device,'' and it is identified as a device used to determine whether a loss of olfactory function is present. The device includes one or more odorants that are presented to the patient's nose to subjectively assess olfactory function (i.e., the patient's ability to perceive odors). This device is not intended for the screening or diagnosis of diseases or conditions other than the loss of olfactory function.

FDA has identified the risks to health associated with this type of device as failure to detect olfactory sensory loss and user error. FDA believes that the class II special controls guidance document will aid in mitigating the potential risks to health by providing recommendations for the validation of performance characteristics and labeling. FDA believes that the special controls guidance document, in addition to general controls, addresses

the risks to health identified previously and provides reasonable assurance of the safety and effectiveness of the device. Therefore, on March 27, 2006, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification at § 874.1600.

Following the effective date of the final classification rule, manufacturers will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of olfactory test devices when intended to determine whether an olfactory loss is present.

II. What Is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. What Is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply with the Paperwork Reduction Act of 1995?

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) is not required. FDA concludes that the special controls guidance document contains information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document Olfactory Test Device.'' The notice contains an analysis of the paperwork burden for the guidance.

VI. What References are on Display?

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from FMG Innovations, Inc., for classification of the HealthCheck™ Home Test for Loss of the Sense of Smell submitted July 28, 2004.

List of Subjects in 21 CFR Part 874

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

■ 1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 874.1600 to subpart B to read as follows:

§ 874.1600 Olfactory test device.

(a) *Identification.* An olfactory test device is used to determine whether an olfactory loss is present. The device includes one or more odorants that are presented to the patient's nose to subjectively assess the patient's ability to perceive odors.

(b) *Classification.* Class II (special controls). The special control for these devices is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Olfactory Test Device.'' For the availability of this guidance document, see § 874.1(e). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9. When indicated for the screening or diagnosis of diseases or conditions other than the loss of olfactory function, the device is not exempt from premarket notification procedures.

Dated: May 24, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–8791 Filed 6–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–015]

RIN 1625–AA08

Special Local Regulations for Marine Events; Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''Pepsi Americas' Sail 2006'', tall ships parade and race to be held on Onslow Bay, Beaufort Inlet, inland waters of the Morehead City State Port and Beaufort Waterfront. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in segments of coastal North Carolina in the vicinity of Onslow Bay, Beaufort Inlet, inland waters of Morehead City State Port and Beaufort Harbor during the parade of sail and tall ship race.

DATES: This rule is effective from July 1, 2006 through July 5, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–015) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, Room 119, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO C.D. Humphrey, U.S. Coast Guard Sector North Carolina, at (252) 247–4525.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 22, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek, NC in the **Federal Register** (71 FR 14428). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

During the period 30 June to July 5, 2006, Pepsi Americas' Sail 2006 LLC will host the North Carolina port call of the ''Pepsi Americas'' Sail 2006''. A parade of sails and tall ships racing event are planned during this period to be conducted on the waters adjacent to Onslow Bay, Beaufort Inlet and the inland waters of Morehead City State Port and Beaufort Harbor, North Carolina. The first event will be the ''Tall Ships Parade of Sails'' on July 1, 2006 that will commence in Anchorage Area ''ALFA'' as depicted on NOAA Chart 11545 ''Beaufort Inlet and Part of Core Sound'', and will enter Beaufort Inlet Channel at Beaufort Inlet Channel Lighted Buoy 7 and Beaufort Inlet Channel Lighted Buoy 8, and will proceed inbound to the Morehead City State Port turning basin thence to Beaufort Harbor Channel to Beaufort Harbor waterfront. The second event will be the ''Tall Ships Race'', on July 3, 2006 that will take place on Onslow Bay from Beaufort Inlet Channel and continuing west approximately 11 nautical miles to a line drawn along longitude 076–54′ W. Because of the danger posed by numerous sailing vessels maneuvering in close proximity of each other during the proposed parade and race, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control and vessel security, traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek, North Carolina.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this temporary regulation will prevent traffic from transiting a segment of the Onslow Bay, Beaufort Inlet, Morehead City State Port and Beaufort Harbor during these events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This temporary rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit these sections of the Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor Channel and Taylor Creek during these events.

This temporary rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Although the regulated area will apply to two separate segments within and around the waters of Onslow Bay, Beaufort Inlet, Morehead City State Port and Beaufort Harbor, traffic may be allowed to pass through the regulated areas with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through a regulated area during an event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event. Although this regulation prevents traffic from transiting the Onslow Bay, Beaufort Inlet, Morehead City State port and Beaufort Harbor Bay during these event, the effect of this regulation will not be significant because of its limited duration. Before the enforcement period, the Coast Guard will issue maritime advisories so

mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This temporary rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this temporary rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary *§ 100.35–T06–015* to read as follows:

§ 100.35–T06–015 Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek near Morehead City NC.

(a) *Regulated area* includes two segments within and around the waters of the Onslow Bay, Beaufort Inlet, Morehead City Turning Basin, Beaufort Harbor and Taylor Creek North Carolina.

(1) The first segment for the ''Parade of Sail'' is bounded by a line drawn from a position at latitude 34°39′36″ N, longitude 076°37′52″ W, thence southerly to a position at latitude

34°37′52″ N, longitude 076°37′52″ W, thence westerly to a position at latitude 34°37′36″ N, longitude 076°40′17″ W, thence southerly to a position at latitude 34°36′50″ N, longitude 076°40′42″ W, thence westerly to a position at latitude 34°36′57″ N, longitude 076°41′25″ W, thence northerly parallel to Beaufort Inlet Channel to latitude 34°40′37″ N, longitude 076°40′32″ W, thence northeasterly to latitude 34°41′21″ N longitude 076°40′11″ W, thence northwesterly parallel to Cutoff Channel to latitude 34°41′43″ N, longitude 076°40′21″ W, thence northwesterly parallel to Morehead City Channel to latitude 34°42′46″ N, longitude 076°42′02″ W, thence westerly to latitude 34°42′46″ N, longitude 076°42′12″ W, thence northerly to latitude 34°42′54″ N, longitude 076°42′13″ W, thence easterly along Morehead City State Port berth seven, six, five and four to latitude 34°42′52″ N, longitude 076°41′33″ W, thence southeasterly to latitude 34°42′35″ N, longitude 076°41′20″ W, thence southeasterly parallel to Morehead City Channel to latitude 34°42′19″ N, longitude 076°40′49″ W at the entrance to Beaufort Harbor Channel, thence along the western bank of Beaufort Harbor Channel to latitude 34°42′54″ W, longitude 076°40′44″ W, thence easterly to the southern tip of Pivers Island, latitude 34°42′54″ N, longitude 076°40′24″ W, thence northerly along the shoreline of Pivers Island to latitude 34°43′08″ N, longitude 076°40′19″ W, thence northerly to intersection of the Beaufort Bascule Bridge and the shoreline at latitude 34°43′21″ N, longitude 076°40′12″ W, thence northerly along the shoreline to latitude 34°43′38″ N, longitude 076°40′17″ W, thence northwesterly to latitude 34°43′47″ N longitude 076°40′22″ W, thence northeasterly to latitude 34°43′55″ N, longitude 076°40′15″ W, thence southerly along then shoreline to latitude 34°43′42″ N, longitude 076°40′04″ W, thence southerly parallel to Gallants Channel to the intersection of the Beaufort Bascule Bridge and the shoreline at latitude 34°43′21″ N, longitude 076°40′05″ W, thence southerly to Beaufort Waterfront at latitude 34°43′07″ N, longitude 076°40′10″ W, thence southeasterly along Beaufort waterfront to latitude 34°42′57″ N, longitude 076°39′55″ W, thence south to Carrot Island latitude 34°42′45″ N, longitude 076°39′55″ W, thence westerly following the shore line of Carrot Island to latitude 34°42′31″ W, longitude 076°40′44″ W, thence southeasterly to latitude 34°41′50″ N, longitude 076°40′08″ W, thence southerly to the western tip of Shackleford Banks at latitude 34°41′18″ N, longitude 076°39′57″ W, thence southerly to latitude 34°40′30″ N, longitude 076°39′50″ W, thence southerly parallel to Beaufort Inlet Channel to latitude 34°39′35″ N, longitude 076°40′00″ W, thence east to the point of origin.

(2) The second segment for the ''Tall Ships Race'' is bounded by a line drawn from a position at latitude 34°40′36″ N, longitude 076°41′00″ W, thence westerly parallel to Bogue Banks to latitude 34°40′21″ N, longitude 076°52′12″ W, thence southwesterly to latitude 34°39′00″ N 076°53′06″ W, thence southeasterly to latitude 34°33′18″ N, longitude 076°42′33″ W, thence northeasterly to latitude 34°34′18″ N, longitude 076°41′27″ W, thence northerly to the point of origin.

(3) All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) Official Patrol means any person or vessel authorized by the Coast Guard Patrol Commander or approved by Commander, Coast Guard Sector North Carolina.

(3) Participant includes all vessels participating in the Pepsi Americas' Sail 2006 under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for the Official Patrol, participants, and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) Any person in the regulated area must stop immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(4) All persons and vessels shall comply with the instructions of the Official Patrol.

(5) When authorized to transit within the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the parade, race course and near other persons and vessels.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 1 p.m. on July 1, 2006, for the ''Parade of Sails''; and from 10:30 a.m. to 5:30 p.m. on July 3, 2006 for the ''Tall Ships Race''. If the ''Tall Ships Race'' is postponed due to inclement weather, then these temporary special local regulations will be enforced the same time period during one of the next two days, July 4, 2006 through July 5, 2006.

Dated: May 19, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–8857 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–027]

Safety Zone: Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of Implementation of final rule.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during June 2006. This action is necessary to provide for the safety of life and property on navigable waters during these events. These safety zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: The safety zones will be effective from 12:01 a.m. (local) on June 7, 2006 to 11:59 p.m. (local) on June 30, 2006.

FOR FURTHER INFORMATION CONTACT: LTJG Cynthia Channell, Chief of Waterways Management, Sector Detroit, 110 Mt. Elliott Ave., Detroit, MI at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing certain permanent safety zones in 33 CFR 165.907 (published May 21, 2001, in the **Federal Register**, 66 FR 27868), for fireworks displays in the Captain of the Port Detroit Zone during June 2006. The following safety zones will be enforced during the times indicated below:

(1) *Bay-Rama Fishfly Festival,* New Baltimore, MI. Location: All waters off New Baltimore City Park, Lake St. Clair-Anchor Bay bounded by the arc of a circle with a 300-yard radius with its center located at approximate position 42°41′ N, 082°44′ W, on June 22, 2006, from 9 p.m. to 11 p.m.

(2) *St. Clair Shores Fireworks,* St. Clair Shores, MI. Location: All waters of Lake

St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°32′ N, 082°51′ W, about 1000 yards east of Veterans Memorial Park (off Masonic Rd.), St. Clair Shores, MI on June 30, 2006, from 10:00 p.m. to 10:30 p.m.

(3) *Sigma Gamma Assoc.,* Grosse Pointe Farms, MI. Location: The waters off Ford's Cove, Lake St. Clair bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°27′ N, 082°52′ W on June 26, 2003 from 9 p.m. to 11 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In the event that these safety zones affect shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone.

Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Dated: May 18, 2006.

P. W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E6–8783 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 06–003]

RIN 1625–AA00

Safety Zone; Cooper River, Hog Island Channel, Charleston SC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing one of two duplicate temporary rules that establish safety zones on the navigable waters of Hog Island Reach on the Cooper River, for demolition of the Grace Memorial and Silas Pearman Bridges and associated recovery operations.

DATES: This rule is effective June 7, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [COTP Charleston 06–003] and are available for inspection or copying at Coast Guard Sector Charleston (WWM), 196 Tradd Street, Charleston, South Carolina 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer James J. McHugh, Sector Charleston Office of Waterways Management, at (843) 724–7647.

SUPPLEMENTARY INFORMATION: On January 19, 2006, we published a temporary final rule that created a temporary safety zone around the Grace Memorial and Silas Pearman Bridges on Hog Island Reach. (71 FR 3005) This safety zone includes all waters within the area bounded by the following coordinates: 32°48.566′ N, 079°55.211′ W to 32°48.389′ N, 079°54.256′ W to 32°47.824′ N, 079°54.401′ W thence to 32°47.994′ N, 079°55.359′ W.

Due to an administrative error, we published a second temporary safety zone for this location on May 25, 2006, at 71 FR 30062. This second temporary final rule has the same section number and establishes a safety zone at the same coordinates as the temporary final rule that published in January; however it has a different effective date and a slightly different title.

In order to avoid confusion and maintain the January effective date of the safe zone, we are removing the second temporary rule that published on May 25, 2006, at 71 FR 30062 and is entitled ''Safety Zone; Cooper River, Hog Island Channel, Charleston, SC.''

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because it removes a second temporary final rule has the same section number and establishes a safety zone at the same coordinates as the temporary final rule that published in January.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because it removes one of two duplicate temporary rules that establish safety zones on the navigable waters of Hog Island Reach on the Cooper River, for demolition of the Grace Memorial and Silas Pearman Bridges and associated recovery operations.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule, because this rule removes a duplicate temporary rule from the Code of Federal Regulations.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T07–003 [Removed]

■ 2. Remove § 165.T07–003 entitled ''Safety Zone, Hog Island Channel, Grace Memorial and Silas Pearman Bridges, Charleston, SC.''

Dated: May 31, 2006.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E6–8853 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OA–2005–0131; FRL–8181–2]

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: In response to adverse comment, EPA is withdrawing the direct final rule published in the **Federal Register** on April 11, 2006 (71 FR 18219). This direct final rule sought to exempt importers of aircraft fire extinguishing vessels containing halon-1301 (''aircraft halon bottles'') from the import petition process in order to facilitate the routine hydrostatic testing of these bottles for environmental and safety purposes. In the direct final rule, the Agency indicated that should we receive adverse comment by May 11, 2006, we would publish a timely withdrawal notice in the **Federal Register**. We received adverse comment on the direct final rule from one commenter and we will address this comment in a subsequent final action based on the parallel proposal also published on April 11, 2006 (71 FR 18259). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: Effective June 7, 2006, EPA withdraws the direct final rule published at 71 FR 18219 on April 11, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR 2005–0131. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this action, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *finman.hodayah@epa.gov*, or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L St., NW., Room 827M, Washington, DC 20005; att: Hodayah Finman. You may also visit the Ozone Depletion web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/index.html* for further information about

EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Halon, Ozone, Reporting and recordkeeping requirements, Treaties.

Dated: June 1, 2006

William L. Wehrum,

Acting Assistant Administrator for the Office of Air and Radiation.

[FR Doc. E6–8831 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0297; FRL–8061–4]

Fenarimol; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fenarimol in or on filbert. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Fenarimol was reassessed and approved by the Agency effective August 1, 2002. To view the Tolerance Reassessment Progress and Risk Management Decision (TRED) and related supporting documents, please refer to docket number (EPA–HQ–OPP–2002–0250–0001) at *www.regulations.gov*.

DATES: This regulation is effective June 7, 2006. Objections and requests for hearings must be received on or before August 7, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0297. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0297 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 7, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0297, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 31, 2005 (70 FR 51802) (FRL–7733–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a

pesticide petition (PP 5E4573) by IR-4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.421 be amended by establishing a tolerance for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on filbert at 0.02 parts per million (ppm). That notice included a summary of the petition prepared by Gowan Company, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of fenarimol on filbert at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fenarimol as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/EPA-PEST/2002/December/Day-04/p30471.htm*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for fenarimol used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENARIMOL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years ofage)	NA	NA	Rat Developmental and Multi-generation Reproductive ToxicityStudy
Acute Dietary (General population including infants and children)	NA	NA	No appropriate endpoint was available to quantitate risk.
Chronic Dietary (All populations)	NOAEL = 0.6 mg/kg/day UF = 100 X Chronic RfD = 0.006 mg/kg/day	Special FQPA SF = 3X cPAD = chronic RfD/Special FQPA SF = 0.002 mg/kg/day	Multi-generation Reproduction Study LOAEL = 1.2 mg/kg/day based on decreased live born litter size in the F_1 and F_2 generations.
Short-Term Incidental Oral, Dermal, andInhalation (1 to 30 days) (Residential)	Dermal/oral study LOAEL = 35 mg/kg/day	LOC for MOE = 900 (Residential) FQPA factor = 3X UF= 300	Special Reproduction Study LOAEL = 35 mg/kg/day based on decreased fertilityand dystocia, an indicator of hormonal effects, observed in aspecial non-guideline cross breeding reproduction/developmentaltoxicity study in rats
Intermediate-Term Incidental Oral, Dermal, and Inhalation (1- 6 months) (Residential)	Dermal/oral study NOAEL = 0.6 mg/kg/day	LOC for MOE = 100 (Residential) FQPA factor = 3X	Multi-generation Reproduction Study LOAEL = 0.6 mg/kg/day based on decreased live born litter size in the F_1 and F_2 generations

TABLE 1.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENARIMOL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	NA	NA	Fenarimol has been classified as a "not likely" human carcinogen (Group E).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.421)(a)(1) for the residues of fenarimol, [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] for the following raw agricultural commodities (RACs): Apple at 0.1; apple, dry pomace at 2.0; apple, wet pomace at 2.0; cattle, fat at 0.1; cattle, kidney at 0.1; cattle, meat at 0.01; cattle, meat byproducts, except kidney at 0.05; goat, fat at 0.1; goat, kidney at 0.1; goat, meat at 0.01; goat, meat byproducts, except kidney at 0.05; horse, fat at 0.1; horse, kidney at 0.1; horse, meat at 0.01; horse, meat byproducts, except kidney at 0.05; pear at 0.1; pecan at 0.1; sheep, fat at 0.1; sheep, kidney at 0.1; sheep, meat at 0.01; and sheep, meat byproducts, except kidney at 0.05.

Tolerances have also been established (40 CFR 180.421)(a)(2) for the combined residues of fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (calculated as fenarimol) for the following RACs: Banana (import) at 0.5; cherry at 1.0; grape, juice at 0.6; grape pomace (wet and dry) at 2.0; grape at 0.2; grape, raisin, waste at 3.0; grape, raisin at 0.6. Risk assessments were conducted by EPA to assess dietary exposures from fenarimol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for fenarimol, therefore a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* The chronic dietary exposure assessment for fenarimol is highly refined using anticipated residues based on 1996–1999 Food and Drug Administration (FDA) monitoring data for apples, bananas, cherries, grapes and pears. Field trial residue data were used for pecans and filberts. Percent crop treated (%CT) information and processing factors, where available, were used in the assessment. There were no PDP monitoring data available for fenarimol.

iii. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Almonds 0.1%; apples 25%; bananas <1%; cherries, sweet 13%; cherries, tart 9%; grapes, raisin 21%; grapes, table 8%; grapes wine 9%; hazelnuts 9%; pecans 1%; and pears 10%. These PCT figures were derived from a quantitative usage analysis (QUA) for fenarimol by the Agency based on data years 1990–1999. The weighted average of percent crop treated (%CT) was used for estimating chronic dietary exposure. Additional information on imported bananas was obtained indicating that less than 1% of bananas consumed in the United States are treated with fenarimol. For pecans, a default 1% crop treated was assumed (0% CT reported in QUA).

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fenarimol may be applied in a particular area.

iv. *Cancer*. Fenarimol has been classified as a ''not likely'' human carcinogen (Group E) and thus a quantitative exposure assessment as to cancer risk is unnecessary.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenarimol in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenarimol.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Groundwater models, the estimated environmental concentrations (EECs) of fenarimol chronic exposures are estimated to be 26 ppb for surface water and 16 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenarimol is not registered for use on any sites that would result in exposure in or around the home. Fenarimol is registered for use on turf however,. Applications to turf are limited to golf courses, and stadium fields or professional athletic fields only. Therefore, the Agency has determined that the only potential non-occupational postapplication exposure is short-term dermal exposure to adult golfers.

EPA's ''Standard Operating Procedures (SOPs) for Residential Exposure Assessments'' at *(http://www.epa.gov/fedrgstr/EPA-PEST/1999/January/Day-04/o-p34736.htm)* were used to estimate the exposures of adult golfers contacting treated turf. The SOPs for turf use transfer coefficients based on mowing studies. Chemical specific data from a turf transferable residue (TTR) study were available; however, these TTR data were unacceptable for use in postapplication exposure assessment. Therefore, default assumptions from the SOPs were used. Exposures were estimated for short-term dermal contact with treated turf during the low contact activity of golfing. The exposure estimates generated for the golfing turf use is based on some upper-percentile assumptions (i.e., duration of exposure and maximum application rate for this short-term assessment) and is considered to be representative of high end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide retained on turf, and assumptions regarding the transfer of fenarimol residues. The turf risk estimate is believed to be a reasonable and protective estimate. Therefore, the level of confidence is fairly high, and does not under estimate risk.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenarimol and any other substances and fenarimol does not appear to produce a toxic metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism among fenarimol and other named pesticides that cause brain effects. EPA concluded that the evidence did not support a finding of common mechanism for fenarimol and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that fenarimol has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The developmental and reproductive toxicity studies showed no evidence of increased sensitivity or susceptibility of young rats or rabbits following prenatal or postnatal exposure to fenarimol. However, the studies demonstrated that fenarimol is associated with hydronephrosis that is reversible.

3. *Conclusion*. The data base for prenatal developmental and reproductive toxicity is considered complete. Based upon the RED completed June 2002, the Agency reduced the FQPA Safety factor from 10X to 3X. It was determined that the 3X would be retained until a special developmental toxicity study was received and reviewed to confirm if the potential hormonal effects elicited by inhibition of aromatase would result in effects in the rat pups. However more recently, fenarimol has been evaluated in studies considered in EPA's Endocrine Disruptor Screening Program including the Pubertal Female and Uterotrophic Assays. The Pubertal Female Assay involves the use of rats to screen for estrogenic and thyroid activity in females during sexual maturation, and examines abnormalities associated with sex organs and puberty markers, as well as thyroid tissue. The Uterotrophic assay involves the use of female rats to screen for estrogenic effects. In this *in vivo* assay, uterine weight changes are measured in ovariectomised or immature female rats.

No adverse effects were found in the female pubertal assay when SD rats were treated at 50 and 250 milligram/kilogram (mg/kg) day for 21 days, except for a decrease in T4 and an increase in circulating TSH levels. In the Uterotrophic assay, a dose of 200 mg/kg day results in a significant increase of uterine weights which were accompanied by an increase in serum FSH levels and a decrease in serum T3 levels. The uterotrophic response and the effects found on thyroid hormone levels are found at much higher doses than the regulatory endpoints based on the rat multi-generation study where fenarimol reduced fertility of males at 1.2 mg/kg per day with a NOAEL of 0.6 mg/kg per day. The 0.6 mg/kg NOAEL

is over 300-fold lower than the uterotrophic response found in rats at 200 mg/kg.

In conclusion, there is greater confidence in the current NOAEL of 0.6 mg/kg per day given these recent studies on the reproductive, developmental and endocrine effects of fenarimol. It is therefore recommended that the 3X FQPA safety factor be removed because there are adequate data evaluating the potential endocrine effects of fenarimol during development and in the young animal. As a result, the Agency no longer requires a special developmental study.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. No acute risk is expected from exposure to fenarimol since no acute endpoints were identified for the general U.S. population (including infants and children) or the females 13–50 years old population subgroup.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenarimol from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants <1 year old, and <1% of the cPAD for children 1-6 years old. There are no residential uses for fenarimol that result in chronic residential exposure to fenarimol. In addition, there is potential for chronic dietary exposure to fenarimol in drinking water. After calculating Drinking Water Level of Comparison (DWLOCs) and comparing them to the EECs for surface water and ground water, infants and children, the most sensitive population subgroups slightly exceed the chronic DWLOC of 20. However, the chronic EECs were estimated using Tier I modeling and only slightly exceed the DWLOC. Additional data are being required that will provide important information on the mobility of fenarimol and its degradates. These studies will help to refine the chronic surface and ground water drinking water risk assessments.

The EECs are based on a Tier 1 model FIRST for a turf use scenario with maximum application rates. The estimated EEC for surface water is a very conservative estimate. It represents the 1-in-10 year mean yearly surface water concentration. The Agency's surface water modeling for drinking water uses a default percent cropped area factor (PCA) for turf, which represents the fraction of the watershed that is cropped and treated with the pesticide being modeled. In the absence of a crop-specific PCA factor, a default PCA of 0.87 is used. The 0.87 factor represents the maximum fraction of a watershed in the US that is agriculturally cropped. This default PCA was used for fenarimol modeling on turf. The Agency is currently attempting to develop PCA factors specific for turf scenarios, and recognizes that it is unlikely that 87% of a watershed used for drinking water would be grown to turf and treated with fenarimol at the maximum rate allowed only for turf applications especially since applications to turf are limited to golf courses, and stadium fields or professional athletic fields only.

The default PCA factor assumed and used in fenarimol modeling is most likely overestimated and adds to the conservatism of the assessment. Given the relatively low usage of fenarimol across the country it is highly unlikely that the amount applied to the watershed in the model will be concentrated in any real watershed used to derive drinking water. Therefore, the EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit. The results indicated in the table below are based upon the RED, and are considered over estimates. Therefore, the risk estimates shown below are actually lower than what the table reports.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENARIMOL

Population/Subgroup	cPAD/mg/kg/day	%/cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.002	<1%	26	16	70
All Infants <1 year old	0.002	<1%	26	16	20
Children (1-6 years old)	0.002	<1%	26	16	20

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenarimol is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fenarimol. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOE of 1,400 for adult golfers. This aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses.

4. *Aggregate cancer risk for U.S. population*. Fenarimol has been classified as a ''not likely'' human carcinogen (Group E).

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenarimol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for data collection and enforcement of tolerances for residues of fenarimol per se in/on plants and livestock. Adequate methods are also available for determination of residues of fenarimol and Metabolites B and C in plants Pesticide Analytical Manual (PAM) Volume II, Methods I (AM-AA-CA-R039-AB-755), II (AM-AA-CA-R072-AA-755), and III (AM-AA-CA-R124-AA-755.

B. International Residue Limits

There is no CODEX maximum residue limit for filbert.

V. Conclusion

Therefore, the tolerance is established for residues of fenarimol, [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol], in or on filbert at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeepingrequirements.

Dated: May 22, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.421 is amended by alphabetically adding a commodity to the table in paragraph (a)(1) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * *	*
Filbert	0.02
* * * *	*

* * * * *

[FR Doc. E6–8659 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0056; FRL–8070–2]

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on pistachio. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 7, 2006. Objections and requests for hearings must be received on or before August 7, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0056. All documents in the

docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only availablein hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *Madden.Barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0056 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 7, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0056, by one of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 19, 2001 (66 FR 15459) (FRL–6766–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E6083) by IR-4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.361 be amended by establishing a tolerance for combined residues of the herbicide pendimethalin, N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino-2-methyl-3,5-dinitrobenyzl alcohol, in or on pistachio at 0.1 parts per million (ppm). That notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on pistachio at 0.1 ppm.

On April 12, 2006 the Agency published a Final Rule (71 FR 18628, FRL–7770–4) establishing tolerances for combined residues of pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on almond, hulls; carrots; citrus, oil; Fruit, citrus, group 10; Nut, tree, group 14; peppermint, oil; peppermint, tops; spearmint, oil; and spearmint, tops. When the Agency conducted the risk assessments in support of this tolerance action it assumed that pendimethalin residues would be present on pistachio as well as on all foods covered by the proposed and established tolerances. Residues on pistachio were included because there was a pending application under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, to register pendimethalin on pistachio. Therefore, establishing the pistachio tolerance will not change the most recent estimated aggregate risks resulting from use of pendimethalin, as discussed in the April 12, 2006 **Federal Register**. Refer to the April 12, 2006 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of April 12, 2006, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pendimethalin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for data collection and tolerance enforcement for existing and proposed uses of pendimethalin. Methods I through IV in the Pesticide Analytical Manuel (PAM) Vol. II are gas chromatography/electron capture (GC/ECD) methods. Methods used for data collection are essentially the same as the PAM Vol. II methods, and have been adequately validated.

The Food and Drug Administrations's PESTDATA data base (PAM Volume I, Appendix I) indicates that pendimethalin is completely recovered (<80%) by Multiresidue Methods Section 302 (Luke method; Protocol D) and 303 (Mills, Onley, Gaither method; Protocol E, nonfatty), and partially recovered (50-80%) by Multiresidue Method Section 304 (Mills fatty food method; Protocol E, fatty).

The method maybe requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex Maximum Residue Levels (MRLs) for pendimethalin residues. Therefore, there are no issues of compatibility with respect to Codex MRLs and U.S. tolerances.

V. Conclusion

Therefore, the tolerance is established for combined residues of pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on pistachio at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations

that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.361 is amended by alphabetically adding a commodity to the table in paragraph (a) to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Pistachio	0.1
* * *	* *

* * * * *

[FR Doc. E6–8830 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0404; FRL–8069–5]

Methoxyfenozide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of methoxyfenozide in or on soybean aspirated grain fractions, soybean forage, soybean hay, soybean hulls, and soybean seed. Dow AgroSciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 7, 2006. Objections and requests for hearings must be received on or before August 7, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0404. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at*http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mark Suarez, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0120; e-mail address:*suarez.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under**FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0404 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 7, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0404, by one of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 13, 2004 (69 FR 50192) (FRL–7364–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6794) by DowAgroSciences, 9330 Zionsville Road 308–2E225, Indianapolis, IN 46268–1054. The petition requested that 40 CFR 180.544 be amended by establishing a tolerance for residues of the insecticide methoxyfenozide per se; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide, in or on soybean aspirated grain at 200 parts per million (ppm), soybean forage at 45 ppm, soybean hay at 65 ppm, soybean hulls at 3.0 ppm, soybean meal at 0.1 ppm, soybean oil at 1.0 ppm, and soybean seed at 2.0 ppm. That notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The registrant subsequently revised Section F of the petition to concur with the tolerances found to be supported by the Agency based on the available data used for the risk assessment. In the revised Section F, Dow AgroSciences requested that 40 CFR 180.544 be amended by establishing a tolerance for residues of the insecticide methoxyfenozide per se; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide, in or on soybean aspirated grain at 160 ppm, soybean forage at 30 ppm, soybean hay at 80 ppm, soybean hulls at 2.0 ppm, and soybean seed at 1.0 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of methoxyfenozide on soybean aspirated grain at 160 ppm, soybean forage at 30 ppm, soybean hay at 80 ppm, soybean hulls at 2.0 ppm, and soybean seed at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific informationon the studies received and the nature of the toxic effects caused by methoxyfenozide as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/EPA-PEST/2002/September/Day-20/p23996.htm*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of

additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose (mg/kg/day)	Endpoint	Study
Acute dietary	None	No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and thedevelopmental toxicity studies in rats and rabbits	None
	UF = N/A	Acute RfD = Not Applicable	
Chronic dietary (Non cancer)	NOAEL = 10.2 mg/kg/day	Hematological changes (decreased RBC, hemoglobin and/or hematocrit), liver toxicity (increased weights, hypertrophy), histopathological changes in thyroid (increased follicular cell hypertrophy, altered colloid), possible adrenal toxicity (increased weights).	2—Year combined chronic feeding/carcinogenicity, rats
All population subgroups	UF =100 FQPA = 1X	Chronic RfD = 0.10 mg/kg/day Chronic Population Adjusted Dose (cPAD) = 0.10 mg/kg/day This cPAD applies to All population subgroups.	
Short-Term, Intermediate- Term, and Long-Term (Dermal)	None	No systemic toxicity was seen at the limit dose following repeated dermal application to rats	None
Short-Term, Intermediate-Term, and Long-Term (Inhalation)	None	Based on low vapor pressure, the low acute toxicity of both the technical and formulated products as well as the application rate and application method, there is minimal concern for inhalation exposure.	None
Cancer	None	Methoxyfenozide has been classified as ''not likely to be a human carcinogen.'' The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies	None

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the residues of methoxyfenozide, in or on a variety of raw agricultural commodities, animal (cattle, goat, hog, horse, poultry, and sheep) meats and fats, and milk. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, acute dietary exposure assessments were not conducted.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Drinking water will contain the highest estimate drinking water concentration (EDWC), 100% of all existing and proposed crops are treated, and all resulting residues are at tolerance levels.

iii. *Cancer.* Because methoxyfenozide has been classified as ''not likely to be a human carcenogen,'' an exposure assessment for the purpose of assessing cancer risk is not needed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of methoxyfenozide. Further information

regarding EPA drinking water models used in pesticide exposure assessment is discussed in Unit III.C.2 of the final rule previously published in the **Federal Register** of July 5, 2000 (65 FR 41355) (FRL–6496–5).

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System and Screening Concentrations in Groundwater models, the estimated environmental concentrations (EECs) of methoxyfenozide for acute exposures are estimated to be 43 parts per billion (ppb) for surface water and 3.5 ppb for ground water. The EECs for chronic exposures are estimated to be 30 ppb, based on surface water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to methoxyfenozide and any other substances and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at*http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of prenatal or postnatal sensitivity, as discussed in Unit IV.C. of the final rule previously published in the **Federal Register** of August 31, 2005 (70 FR 51597) (FRL–7732–3).

3. *Conclusion*. There is a complete toxicity data base formethoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the FQPA Safety Factor can be reduced to 1X in assessing the risk posed by this chemical. The basis for this determination is discussed in Unit IV.C.5 of the final rule previously published in the **Federal Register** of August 31, 2005.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, no acute dietary risk is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food and drinking water will utilize 23% of the cPAD for the U.S. population, 32% of the cPAD for all infants <1-year old, and 56% of the cPAD for children 1-2 years old, the highest exposed subgroup. There are no residential uses for methoxyfenozide that result in chronic residential exposure to methoxyfenozide.

3. *Short-term and Intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Methoxyfenozide has been classified as ''not likely'' to be a human carcinogen. The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, methoxyfenozide is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (TR 34–00–28) was previously developed by Rohm and Haas; high performance liquid chromatography (HPLC) with positive ion electrospray (E.I.) tandem mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican limits for residues of methoxyfenozide in or on plant or animal commodities. Therefore, no compatibility issues exist regarding the proposed U.S. tolerances.

V. Conclusion

Therefore, the tolerance is established for residues of methoxyfenozide per se; benzoic acid, 3-methoxy-2-methyl-2-(3,5- dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on soybean aspirated grain at 160 ppm, soybean forage at 30 ppm, soybean hay at 80 ppm, soybean hulls at 2.0 ppm, and soybean seeds at 1.0 ppm. The original petition (PP 3F6794) and notice of filing (Docket identification number OPP–2004–0184) contained additional proposed tolerances for soybean, oil and

soybean, meal. Dow AgroSciences the registrant submitted a revised Section F of the petition for the removal of soybean, oil and soybean, meal from the tolerance expression.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.544 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * *	*
Soybean, aspirated grain fractions	160
Soybean, forage	30
Soybean, hay	80
Soybean, hulls	2.0
Soybean, seed	1.0
* * * *	*

* * * * *

[FR Doc. E6–8828 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1051; MB Docket No. 05–108; RM–11178]

Radio Broadcasting Services; Andover and Haverhill, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Beanpot Broadcasting Corp., licensee of Station WXRV(FM), Channel 223B, Haverhill, Massachusetts, deletes Channel 223B at Haverhill,

Massachusetts, from the FM Table of Allotments, allots Channel 223B at Andover, Massachusetts, as the community's first local FM service, and modifies the license of Station WXRV(FM) to specify operation on Channel 223B at Andover. Channel 223B can be allotted to Andover, Massachusetts, in compliance with the Commission's minimum distance separation requirements at WXRV(FM)'s existing transmitter site. The coordinates for Channel 223B at Andover, Massachusetts, are 42–46–23 North Latitude and 71–06–01 West Longitude, with a site restriction of 13.1 km (8.1 miles) north of Andover.

DATES: Effective July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–108, adopted May 17, 2006, and released May 19, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts is amended by adding Andover, Channel 223B, and by removing Haverhill, Channel 223B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8846 Filed 6–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1053; MB Docket No. 06–19; RM–11288]

Radio Broadcasting Services; Hattiesburg and Sumrall, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* this *Report and Order* upgrades Channel 226A, FM Station WGDQ, Hattiesburg, Mississippi, to Channel 226C3, reallotts Channel 226C3 from Hattiesburg to Sumrall, Mississippi, and modifies Station WGDQ's license accordingly. The coordinates for Channel 226C3 at Sumrall, Mississippi, are 31–33–15 NL and 89–24–50 WL, with a site restriction of 19.5 kilometers (12.1 miles) northeast of Sumrall.

DATES: Effective July 3, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 06–19, adopted May 17, 2006, and released May 19, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 226A at Hattiesburg, and by adding Channel 226C3 at Sumrall.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8862 Filed 6–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1049; MB Docket No. 05–104; RM–10837, RM–10838]

Radio Broadcasting Services; Black Rock, Cave City and Cherokee Village, AR and Thayer, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252C3 at Cherokee Village, Arkansas, reallots Channel 252C2 to Black Rock, Arkansas, and modifies the Station KFCM license to specify operation on Channel 252C2 at Cherokee Village. To replace the loss of the sole local service at Cherokee Village, this document also reallots Channel 222C2 from Thayer, Missouri, and modifies the Station KSAR license to specify Cherokee Village as the community of license. This document also reclassifies the Channel 253C allotment at Little Rock, Arkansas, to Channel 253C0, and modifies the Station KURB license at Little Rock, Arkansas, to specify operation on Channel 253C0. The reference coordinates for the Channel 252C2 allotment at Black Rock, Arkansas, are 36–05–25 and 91–08–55. The reference coordinates for the Channel 222C2 allotment at Cherokee Village, Arkansas, are 36–21–58 and 91–28–35. The reference coordinates for the Channel 253C0 allotment at Little rock, Arkansas, are 34–47–56 and 92–29–44.

With this action, the proceeding is terminated.

DATES: Effective July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 05–104, adopted May 17, 2006, and released May 19, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments, under Arkansas, is amended by removing Channel 252A and adding Channel 222C2 at Cherokee Village.

■ 3. Section 73.202(b), the Table of FM Allotments, under Missouri, is amended by removing Thayer, Channel 222C2.

■ 4. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Black Rock, Channel 252C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8863 Filed 6–6–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2006–24980]

RIN 2127–AI66

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule establishes breaking strength requirements for child restraint webbing. Under today's final rule, new webbing that attaches a restraint to a vehicle is required to have a minimum breaking strength of 15,000 N. New restraint webbing used to restrain a child in a restraint is required to have a minimum breaking strength of 11,000 N. Today's final rule maintains the percent-of-strength requirements for webbing after it is exposed to specific environmental conditions that have been required under the child restraint system standard. Today's final rule also clarifies the weights used in the webbing abrasion test procedure. The requirements of this final rule increase the likelihood that the webbing of child restraint systems will sufficiently perform throughout the life of a child restraint.

DATES: The effective date of this final rule (*i.e.*, the date that the rule amends the Code of Federal Regulations) is August 7, 2006. The compliance date of this rule is September 1, 2007 (all child restraints manufactured on or after this date must meet the requirements of this final rule).

Petitions for reconsideration must be received not later than July 24, 2006.

ADDRESSES: Petitions must be submitted to: Administrator, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mr. Tewabe Asebe, Office of Rulemaking (Telephone: 202–366–2365) (Fax: 202–366–7002). For legal issues, you may contact Mr. Chris Calamita, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Strength Requirements

a. Background and the NPRM

Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child restraint systems*, regulates child restraint systems used in motor vehicles and aircraft (49 CFR 571.213). Among other things, this standard specifies requirements for the webbing material used in child restraint systems, including requirements for the strength of the webbing after the webbing is subjected to abrasion (S5.4.1(a)), light exposure (S5.4.1(b)), and micro-organisms (S5.4.1(b)).[1] These specified conditions simulate the conditions that webbing will likely encounter through normal use. Evaluating the performance of the webbing after subjecting the webbing to those conditions better ensures the long-term integrity of the webbing.

Each of the requirements for exposed webbing is expressed in the form of a percent-of-strength of the webbing measured before exposure. S5.4.1(a) specifies that, after being subjected to abrasion as specified in certain sections of FMVSS No. 209, the webbing must have a breaking strength of not less than 75 percent of the strength of the unabraded webbing. S5.4.1(b) of FMVSS No. 213, referring to S4.2(e) in FMVSS No. 209, specifies that after being exposed to light, the webbing shall have a breaking strength of not less than 60 percent of the strength before exposure. The same section of FMVSS No. 213 also refers to S4.2(f) of FMVSS No. 209, which specifies that after being exposed to micro-organisms, the webbing shall have a breaking strength of not less than 85 percent of the strength before exposure to micro-organisms.

However, FMVSS No. 213 does not currently specify a minimum breaking strength for new webbing against which the percentages would be measured. Addressing this aspect of the standard,

[1] S5.4.1(a) and (b) reference FMVSS No. 209, 49 CFR 571.209, *Seat belt assemblies*, which specifies requirements and the associated test procedures for seat belt assemblies.

on June 30, 2005, we published the notice of proposed rulemaking (NPRM)(70 FR 37731; Docket No. NHTSA–2005–21243) preceding this final rule. In the NPRM, we expressed concern that because there is no specified minimum breaking strength for new webbing, manufacturers could use webbing of inferior strength to meet the standard's requirements. The exposed webbing might have a breaking strength that is within the specified percentage of the strength of the new webbing, but the webbing might not have an absolute strength high enough to provide a margin of safety for use throughout the life of a child restraint.

The NPRM sought to achieve three goals (70 FR at 37732). First was to specify a minimum breaking strength for unabraded webbing or webbing that has not been exposed to light or micro-organisms (hereinafter referred to as ''new webbing''), to address the concern about a lack of a minimum breaking strength requirement for new webbing. Second was to affirm that a purpose of S5.4.1(a) and (b) of FMVSS No. 213 was to limit the degradation rate of the webbing. We stated that limiting degradation was done by having a minimum breaking strength requirement that applies to webbing that has been exposed to mechanical or environmental conditions in the test laboratory that accelerate the aging of the webbing. (Webbing that has been abraded or exposed to the accelerated conditions is referred to as ''exposed webbing.'') We tentatively concluded that specifying minimum breaking strength requirements for new and exposed webbing would eliminate the need for the current percent-of-strength degradation requirements. Third was to clarify the weight used in the abrasion test to abrade the webbing used to attach child restraint systems to the child restraint anchorages located in a vehicle.

Table 1, below, summarizes the NPRM's proposed minimum breaking strength requirements for new and exposed webbing: (a) Used to attach the child restraint system to the vehicle (hereinafter ''tether webbing'') [2], and (b) used to restrain the child in the child restraint (hereinafter ''harness webbing''). We proposed a more stringent requirement for tether webbing because tether webbing secures the mass of a child restraint and child, whereas harness webbing is limited to securing the mass of a child occupant.

The agency explained in the NPRM (70 FR at 37734) that the 15,000 N value for new tether webbing was based on a calculation of the loads imposed by the mass of a child and child restraint together, and on a consideration of the breaking strength previously required for seat belt assembly restraints for persons not weighing more than 50 pounds (Type 3 seat belt assemblies) [3] (70 FR at 37734). Type 3 webbing was required to meet a breaking strength in the range of approximately 13,000–18,000 N, depending on the number of webbing connections to attachment hardware. The agency believed that a 15,000 N requirement has a margin of safety above the minimum 13,000 N lower limit previously established for Type 3 webbing. We also noted that of 20 child restraint systems tested, 17 had tether webbing with a breaking strength of 15,000 N or greater, indicating that a 15,000 N requirement would be feasible. We further stated that we are unaware of real-world data that would indicate the presence of a safety problem associated with the strength levels of current webbing.

The NPRM proposed a minimum breaking strength of 11,000 N for new harness webbing. The 11,000 N proposal was based in part on the breaking strength requirements for Type 3 belt assemblies prior to 1979, which ranged from 1,500 pounds (6,670 N) for webbing in pelvic and upper torso restrains to 4,000 pounds (17,793 N) for webbing in seat back retainers. The proposal was also based on a consideration of compliance data for 109 child restraint systems collected from 2000–2002. Ninety-two percent (100 out of 109) of the harness webbing had a breaking strength above 11,000 N. Given also that there have been no real-world reports of harness webbing failures, the agency tentatively determined that the proposed requirement was reasonable.

The NPRM proposed to require tether and harness webbing to meet minimum strength requirements after abrasion, exposure to light, and exposure to micro-organisms, the same test conditions to which child restraint webbing is currently exposed. Currently in FMVSS No. 213, each of the post-exposure strength requirements is calculated from percentages of the strength of the original (new) webbing. The NPRM proposed not changing the percentages now used to calculate the post-exposure strength requirements (75 percent—abrasion, 60 percent—exposure to light, and 85 percent—exposure to micro-organisms). The proposed minimum strength requirements for the exposed webbing were calculated using those percentages, which were determined by the Society of Automotive Engineers (SAE) and incorporated into SAE Standard SAE J4c, Motor Vehicle Seat Belt Assemblies. The agency incorporated the SAE percentages and procedures into FMVSS No. 209 and FMVSS No. 213.

TABLE 1.—PROPOSED BREAKING STRENGTH REQUIREMENTS

Type of webbing	Type of exposure	Proposed breaking strength requirement
New tether webbing		15,000 N.
Exposed tether webbing	Abrasion	11,200 N.
	Exposure to light	9,000 N.
	Exposure to micro-organisms	12,700 N.
New harness webbing		11,000 N.
Exposed harness webbing	Abrasion	8,200 N.
	Exposure to light	6,600 N.
	Exposure to micro-organisms	9,300 N.

[2] As used in this preamble, the term ''tether webbing'' includes webbing used to attach a child restraint to all three anchorages of a LATCH system.

[3] As explained in the NPRM (70 FR 37732), prior to 1979 FMVSS No. 209, *Seat belt assemblies,* had requirements for Type 3 seat belts. In December 1979, the Type 3 requirements were removed from FMVSS No. 209 and incorporated into an updated FMVSS No. 213 (44 FR 72131).

b. Summary of Public Comments

In response to the NPRM, the agency received comments from Advocates for Highway and Auto Safety (Advocates), a consumer group, and Britax Child Safety, Inc. (Britax), a child restraint manufacturer. Both commenters generally supported the establishment of minimum breaking strength requirements for child restraint system webbing, but Advocates believed that a 15,000 N requirement for new tether webbing may be too low, while Britax questioned whether a 15,000 N requirement was too high.[4] The comments generally centered on: (a) What the strength requirements should be; and (b) artifacts of component testing of webbing.

c. Response to the Comments

1. What should be the minimum strength requirements for new webbing?

The NPRM proposed that the minimum breaking strength should be 15,000 N for new tether webbing and 11,000 N for new harness webbing.

i. Are the proposed limits too low?

A. In its comments to the NPRM, Advocates supported establishing specific strength requirements, but questioned whether a 15,000 N requirement would be sufficient. Advocates suggested that the agency consider the breaking strength requirements of FMVSS No. 209, ''Seat belt assemblies,'' because the tether webbing attaches child restraints to a vehicle and takes the place of the vehicle's belts in fulfilling this function. Advocates recommended that the minimum breaking strength for new tether webbing should be 22,241 N, the breaking strength requirement for the lap belt portion of a lap/shoulder seat belt (Type 2 seat belt) under FMVSS No. 209.

Response: The agency believes that a 15,000 N requirement is sufficient. The requirement is based on an analysis of the force generated by a 50 pound (lb) child that is secured in a 15-lb child restraint system (the average weight of a toddler restraint) in a 48 kilometer per hour (km/h) (30 mile per hour (mph)) crash. As explained in the NPRM, the resulting dynamic force from such a crash is less than 15,000 N. There are child restraints for children weighing more than 50 lb, but those restraints are typically booster seats which do not use webbing to attach the child restraint to the vehicle.

We disagree that there is a safety need to adopt FMVSS No. 209 webbing strength requirements. FMVSS No. 209 establishes requirements for vehicle seat belts to ensure that seat belt assemblies are suitable for restraining occupants as large as a 95th percentile male (223 lb). Child restraint system webbing does not need to be as strong, since the loads generated in that application are much less.

B. Advocates stated in its arguments that the minimum breaking strengths for exposed webbing should at least be comparable to the LATCH[5] anchorage strength requirements. Advocates stated that such a requirement would ensure that the webbing provided adequate strength for the life of a child restraint, and that the webbing would not be a ''weak link'' in the LATCH system, *i.e.*, webbing would not fail at force levels lower than those that would result in a failure of the LATCH anchorages.

Response: The strength requirements established today are component requirements. Each webbing component must meet the requirement. The strength requirements for LATCH anchorages under FMVSS No. 225 apply to the anchorages when the system is tested, *i.e.* the anchorages must be able to endure a 15,000 N force applied to all three anchorages simultaneously, and a separate 11,000 N force applied to just the lower anchorages simultaneously. The minimum strength requirements for exposed webbing as tested on the component level are comparable to or more than the loads generated on the anchorages as a system in the test, ensuring an adequate margin of safety over the life time of a restraint while keeping the requirements within reason.

C. Advocates also suggested that webbing that secures a child restraint to the lower LATCH anchorage points should have a more stringent strength requirement than that for tether webbing which secures a child restraint to the upper LATCH anchorage. Advocates stated that the webbing associated with the lower anchorages will ''bear the brunt of the forces exerted on the child restraint in the event of a crash.''

Response: S9.4 of FMVSS No. 225 requires that the lower anchorages withstand an 11,000 N force applied to both anchorages simultaneously. Today's final rule requires that the webbing have a minimum breaking strength of 15,000 N at the component level. Child restraint systems typically are secured to the LATCH attachments with more than one piece of webbing. The combined strength of the webbing attaching the child restraint to the lower LATCH anchors is sufficiently strong, provides an adequate margin of safety, and does not need to be increased.

D. In setting the proposed strength requirements for new webbing, NHTSA evaluated compliance data from the FMVSS No. 213 compliance program in 2000–2002. We determined that a certain portion of the tested webbing would pass a higher limit (17,000 N), and a certain portion would pass a lower limit (13,000 N) (70 FR at 37734). Advocates stated that the agency ''should not be seeking to 'grandfather' a majority of current products. * * *''

Response: The agency's evaluation of compliance data was to demonstrate that the proposed requirements, and ultimately those adopted today, are feasible to achieve. Additionally, as stated in the NPRM, the agency wanted to point out that current webbing meeting a 15,000 N requirement has not been breaking in normal use. Advocates commented that this lack of data may be a result of the LATCH requirements being relatively new. The LATCH top tether anchorage has been used in the United States since 1999. Moreover, tethers have been used in Canada, which has comparable strength requirements to those adopted today, since the 1970's without an indication of an issue with webbing strength. Thus, for the reasons explained in the NPRM, we conclude that a 15,000 N strength requirement for new tether webbing meets the need for safety, improves the enforceability of the standard, and is practicable.

ii. Are the proposed limits too high?

A. Noting that the NPRM had discussed NHTSA's compliance test of a Britax tether webbing specimen that had an unabraded breaking strength of only 5,385 N, Britax stated that it has seen no real-world experiences related to webbing failures. Britax believed that the proposed webbing strength values are more stringent than necessary, and that overly stringent requirements for tether webbing may result in an increase in recorded injury criteria. Britax stated that excessive webbing strength may negatively affect other characteristics of webbing material such as elongation,

[4] No commenter directly addressed the proposal for a 11,000 N strength requirement for new harness webbing.

[5] ''LATCH'' stands for ''Lower Anchors and Tethers for Children,'' a term that was developed by manufacturers and retailers to refer to the standardized child restraint anchorage system required by FMVSS No. 225, ''Child restraint anchorage systems.'' This preamble uses the term to describe either an FMVSS No. 225 anchorage system in a vehicle or a child restraint that attaches to an FMVSS No. 225 child restraint anchorage system. Child restraints have been required by FMVSS No. 213 to have components enabling attachment to the lower anchors of a vehicle's LATCH system since September 1, 2002. Child restraints have had top tethers that attach to the tether anchor of a LATCH system since 1999.

and suggested that further evaluation by NHTSA and the industry is needed to determine the affect the proposed webbing strength requirements will have on dynamic performance.

Response: The lack of a minimum breaking strength requirement for new webbing prompted the agency to undertake this rulemaking. NHTSA was concerned that where there is no specified minimum breaking strength for new webbing, manufacturers could use webbing of inferior strength to meet the standard's requirements. Without a specified initial breaking strength requirement, the percentage-of-strength requirement alone did not provide an effective floor for acceptable performance. The exposed webbing might have a breaking strength that is within the specified percentage of the strength of the new webbing, but the webbing might not have an absolute strength high enough to provide a margin of safety for use throughout the life of a child restraint (70 FR at 37732). The agency also determined that a minimum strength requirement should be based on an analysis of the forces likely to be imposed on the webbing. Our calculation of those forces led us to determine that a 15,000 N requirement would be high enough to withstand such forces, and would be high enough such that exposed webbing could degrade in strength yet would maintain sufficient strength to perform as needed for as long as the restraint is used.

Related to its comment that its 5,385 N webbing is satisfactory, Britax stated that its webbing maintained in some cases up to 100 percent of the original webbing strength. Britax believed that the webbing maintains an acceptable strength following the specified testing and meets the agency's intent of the rulemaking. (Britax states, and we concur, that our intent ''is to ensure that the webbing strength will as satisfactorily protect the life of the occupant at the end of the product life, as it did in the beginning.'') The agency concurs that keeping the current requirement that exposed webbing must retain a specified percentage of the original strength of the webbing is preferable to the approach proposed in the NPRM. This point is discussed in the next section. However, for the reasons given above, the agency believes that there should also be a component in FMVSS No. 213 that specifies the minimum strength of the new webbing. The 15,000 N and 11,000 N breaking strength requirements for new tether and harness webbing, respectively, serve a safety need and are reasonable.

Further, Britax did not provide any data to show that the minimum breaking strength adopted today is ''excessive.'' The compliance data relied upon by the agency in the NPRM demonstrated that current child restraint systems are equipped with webbing that exceeds the minimum requirements adopted today [6] while being compliant with all of the injury criteria requirements of FMVSS No. 213.

B. Advocates also raised a concern related to elongation of the webbing. The commenter recommended that the agency establish a requirement for the elongation characteristics of webbing, stating that elongation leads to fatigued material strength and can dramatically reduce webbing tensile strength during sudden dynamic loading.

Response: An elongation requirement would be outside of the scope of the NPRM. Moreover, the agency disagrees that there is a demonstrated need to establish elongation requirements for webbing at the component level. The effect of webbing elongation is already addressed in the excursion limit requirements in the dynamic testing specified in FMVSS No. 213. S5.1.3.1 of FMVSS No. 213 limits the amount of excursion that can be experienced by a test dummy's head and knees during a 48 km/h (30 mile per hour) crash test. As such, the requirements for child restraint systems, when tested dynamically, place practical limits on the elongation characteristics of webbing. Advocates did not provide any data to indicate that the elongation limitation inherent to the dynamic requirements of FMVSS No. 213 is insufficient.

2. Need to retain percent-of-strength requirement for exposed webbing

The NPRM proposed to establish minimum breaking strength requirements for exposed webbing. The minimum breaking strength requirements were calculated from the proposed strength requirements for new webbing, using the existing percent-of-strength requirements in the current rule. We proposed that abraded tether webbing would be required to have a minimum breaking strength of 11,200 N (which is 75 percent of 15,000 N), tether webbing exposed to the light degradation procedure would be required to have a breaking strength of 9,000 N (60 percent of 15,000 N), and tether webbing exposed to the micro-organism test procedure would be required to have a minimum breaking strength of 12,700 N (85 percent of 15,000 N). Comparable limits were proposed for exposed harness webbing.

A. Britax suggested that ''As the agency only tests new child restraint systems, with the proposed webbing breaking strength there is a wider window of degradability that may create an adverse condition in the field not detectable by the agency.'' Britax stated that ''the wider the window of degradability, the increase on the risk of adverse affect [sic] on child safety. * * * The proposed rule potentially permits a greater percentage of degradation.'' Britax suggested that the minimum strength requirements for exposed webbing ''must reflect the degradation percentages.'' As stated by Britax:

> Under the proposed requirement, the minimum breaking strength of unabraded tether webbing is 15,000 N, 75% of which is 11,200 N—the minimum breaking strength of abraded tether webbing. As the proposed rule is written, the 'minimum' requirement allows the manufacturer to provide webbing with a higher breaking strength. Notwithstanding the potential result the higher breaking strength may have on the overall performance of the child restraint, the abraded webbing strength may be as low as 11,200 N, potential[ly] more than the 25% reduction in breaking strength now permitted under 49 CFR § 571.213 and 209.

Response: After considering Britax's comment, we conclude that the NPRM did not sufficiently limit the degradation rate of webbing material and thus did not adequately fulfill the second of the agency's goals for the rulemaking. The agency agrees with the commenter that exposed webbing should be required to maintain a minimum percentage of its strength as new webbing, as a means of limiting the degradation rate of the webbing. The rate of degradation is preferable to specifying an absolute minimum strength for exposed webbing because limiting a rate of degradation insures proper webbing material selection. An excessive degradation rate (*e.g.*, over 25% when subjected to the abrasion test) indicates a problem with the quality and/or durability of the selected material. Our review of general engineering literature indicates that specifying strength requirements by limiting degradation rates is standard industry practice for proper material selection.

The degradation rate will not be limited by having only a minimum breaking strength applying to new and exposed webbing. We believe that Britax is correct that the approach of the NPRM created a potential loophole whereby webbing that degraded in the laboratory tests more than 25 percent

[6] The mean breaking strength for new tether webbing was over 17,000 N (NHTSA Docket No. 2005–21243–2).

when abraded, 40 percent when exposed to light, or 15 percent when exposed to micro-organisms could be used in the manufacture of child restraints. We want to prevent the use of such webbing because it may not last as long as necessary to protect children using the restraint (including for second-hand restraint use).

The laboratory tests are accelerated aging tests which provide a snapshot of the webbing over prolonged exposure to environmental conditions. The tests are not intended to and do not assess how strong a particular tested specimen will be at the end of its life. The tests do not replicate the lifetime use of the webbing.[7] If a child restraint webbing sample lost more than 25 percent of its strength when abraded in the test, the webbing will have abraded so much during that snapshot assessment that we question its ability to last the lifetime of the restraint,[8] especially when exposed year after year to the cumulative effects of light, micro-organisms and other conditions. Thus, today's final rule maintains the current percent-of-strength requirements for exposed webbing. Exposed tether webbing must maintain 75 percent, 60 percent, and 85 percent of the new webbing strength when exposed to abrasion testing, light degradation testing, and micro-organism degradation testing, respectively.

NHTSA emphasizes that as a result of retaining the percent-of-strength breaking strength requirements for exposed webbing, if new webbing has a breaking strength higher than the minimum required (15,000 N for new tether webbing or 11,000 N for new harness webbing), the exposed webbing breaking strengths must be higher than the minimum values listed for exposed webbing in proposed Table 1 of the NPRM (for the convenience of the reader, that table was set forth in this preamble, *supra*). Exceeding the degradation rates of the standard indicates a quality problem with the webbing material selection and raises concern that the webbing may not satisfactorily perform at the end of its product life as it did at the beginning, even if the exposed webbing has a breaking strength that is higher in magnitude than a competitor's webbing that met the percent-of-strength requirement.

[7] ''The primary purposes of laboratory tests are merely to save valuable time and to serve as controls in the manufacture of basic materials.'' Plastics Engineering Handbook of the Society of the Plastics Industry, Inc., Third Ed., Van Nostrand Reinhold Company, 1960.

[8] The same concerns apply to webbing that lost more than 40% or 15% of its strength after exposure to light and micro-organisms, respectively.

B. The agency proposed specific minimum strength requirements for exposed harness webbing that were based on the percent-of-strength requirements of the current standard; *i.e.*, 8,200 N (75 percent of 11,000 N) for abraded harness webbing, 6,600 N (60 percent of 11,000 N) for harness webbing exposed to light degradation, and 9,300 N (85 percent of 11,000 N) for harness webbing exposed to micro-organism degradation.

Today's final rule does not establish absolute minimum strength values for exposed harness webbing, but instead retains the percent-of-strength requirements of the current regulation. Again, as the webbing requirements apply at a component level, the minimums established today ensure that child restraint webbing will perform adequately and will continue to do so as it ages.

3. Artifacts of component testing of webbing

A. The webbing requirements adopted today apply to webbing at the component level, *i.e.*, child restraint webbing must comply with the requirements when tested independently from the child restraint system. Britax wanted the agency to consider child restraint requirements in terms of the interaction of the restraint with a vehicle on a system level. The commenter was concerned that establishing minimum breaking strength requirements for multiple child restraint components would hinder a manufacturer's ability to ''optimize'' a design to maximize safety.

Response: Today's requirements apply to the component level to the same extent as currently required under the standard. The component requirements enable the agency to conduct accelerated aging tests. The breaking strength requirements ensure that the performance of webbing over the lifetime of a child restraint system is sufficient to provide the necessary protection. Requirements that apply to new child restraints only, such as the dynamic sled test conducted on the child restraint as a system, do not provide comparable assurances, particularly for components such as webbing that are likely to experience extraordinary ''wear and tear'' and exposure to elements that can degrade the webbing strength in the course of normal use.

B. With regard to the specific percent-of-strength requirements, Advocates asked why different exposure paths have different percent requirements.

Response: As explained in the NPRM, the percent-of-strength values and the corresponding test procedures were determined by the Society of Automotive Engineers (SAE) and incorporated into SAE standard SAE J4c, *Motor Vehicle Seat Belt Assemblies.* The agency incorporated the SAE percentages and procedures into FMVSS Nos. 209 and 213.

The differences in percentage degradation levels for abrasion, exposure to light, and exposure to micro-organisms are due to differences in the accelerated laboratory test procedures used to predict long-term exposure. That is, the degradation percentage requirements are dependant on the procedures for the individual tests. For example, the resistance-to-abrasion test specifies a 2,500 cycle procedure at a specific weight and cycle rate. The resistance-to-light test specifies 100 hours of exposure to carbon-arc light. The variations in the types of environmental tests the webbing is exposed to are reflected in the differences in the percent degradation requirements.

d. Conclusions

Today's final rule adopts the proposed minimum breaking strength requirements for new webbing, but does not adopt the proposal to specify minimum breaking strength requirements for exposed webbing. Instead, the final rule retains, for exposed webbing, the current percent-of-strength requirements. Under today's final rule, new tether webbing must have a minimum breaking strength of 15,000 N, and new harness webbing must have a minimum breaking strength of 11,000 N. For exposed webbing, rather than adopting specific strength requirements for the webbing, we are retaining the current percent-of-strength requirement. That is, exposed webbing, whether it is tether webbing or harness webbing, must maintain 75 percent, 60 percent, and 85 percent of the new webbing strength when exposed to abrasion testing, light degradation testing, and micro-organism degradation testing, respectively.

The requirements adopted today increase the likelihood that the webbing material of child restraints maintains its integrity for the lifetime of the restraint. The degradation rate of the webbing, as measured in the ''snapshot'' of the performance of the webbing obtained in the accelerated aging tests, indicates the quality of the material in withstanding long-term exposure. The ability of the webbing to maintain its integrity is especially important now that child restraints are required by FMVSS No. 213 to have components that attach to the LATCH system on vehicles. Child

restraint manufacturers have predominately chosen to connect these components to the child restraint by use of webbing material. Requiring the webbing material to meet a minimum strength requirement when new, and not exceed a specified rate of degradation when exposed to environmental conditions, will better ensure that child restraints will be able to be securely attached to the vehicle in a crash, even when the restraint is passed down to second-hand users.

II. Weight Used to Abrade

S5.4.1(a) of FMVSS No. 213 requires that child restraint belt webbing must meet breaking strength requirements after being abraded pursuant to a procedure specified in S5.1(d) of FMVSS No. 209. S5.1(d)'s abrasion procedure requires that belt webbing be drawn across two edges of a hexagonal steel bar by an oscillating drum, with one end of the webbing sample attached to the drum and the other attached to a weight with a specified mass. Two different weights are specified:

> One end of the webbing (A) shall be attached to a mass (B) of 2.35 [kilogram (kg)] ± .05 kg, except that a mass of 1.5 kg ± .05 kg shall be used for webbing in pelvic and upper torso restraints of a belt assembly used in a child restraint system.

A tether strap used to attach a child restraint to the vehicle is neither a pelvic nor upper torso restraint, and therefore does not fall within the exclusion allowing for use of the 1.5 kg mass. Thus, the 2.35 kg mass should be used to abrade tether webbing. To make the wording clearer, the NPRM proposed to amend S5.4.1 by adding a reference to the 2.35 kg mass as the mass used in the abrasion test to abrade webbing used to attach a child restraint to a vehicle's LATCH system (tether webbing). The agency wanted to clarify the language because it believed it was important that the 2.35 kg mass be used to abrade this webbing. The heavier weight should be used because installation and removal of the child seat exposes the webbing to greater potential for abrasion, and because the webbing used for the LATCH attachments must restrain the mass of both the child and the child restraint system.

No comments were received on this issue and the agency reiterates that the heavier mass should be used in the test of tether straps (i.e., any strap used to attach the child restraint to LATCH anchorages). However, as we were reviewing the proposed S5.4.1 regulatory text, we determined that the proposed language was in need of correction, as it was not equivalent to nor did it entirely clarify the language of S5.1(d) of FMVSS No. 209. We concluded that it was unnecessary to limit the text specifically to webbing used to secure a child restraint system to the LATCH anchorages, and that doing so could give rise to questions of interpretation about which weight to use for webbing that was neither used in pelvic and upper torso restraints of a child restraint belt assembly nor used to attach the restraint to a LATCH system. Accordingly, this final rule generally uses the language of S5.1(d) of FMVSS No. 209 in clarifying FMVSS No. 213 regarding the mass used to test the webbing of child restraints, but specifies that the heavier mass (2.35 kg) must be used for webbing including but not limited to webbing used to secure child restraint systems to LATCH anchorages and that the lighter mass (1.5 kg) shall be used for webbing in pelvic and upper torso restraints of a belt assembly used in a child restraint system.

III. Compliance Date

The compliance date of this rule is September 1, 2007 (all child restraints manufactured on or after this date must meet the requirements of this final rule). A majority of the child restraint systems surveyed for the NPRM would comply with the requirements adopted today. However, the agency is aware that manufacturers may purchase webbing for production of a child restraint model in advance of production. Today's final rule provides manufacturers with over a year of lead time, which should minimize the need for manufacturers to replace existing stock and will provide adequate time for manufacturers to secure compliant webbing for future production.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed by the Office of Management and Budget. The rulemaking action is also not considered to be significant under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

The agency concludes that this rulemaking action will not have an annual effect on the economy of $100 million. The agency is establishing minimum breaking strength requirements for webbing used in child restraint systems. The agency estimates that most child restraint systems meet these requirements. NHTSA estimates that the cost of webbing material that meets the requirements adopted today is only about $.10 per foot. Thus, the impacts of this rulemaking are so minor so as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), the agency must determine the impact of its proposal or final rule on small businesses. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. The rational for this certification is that most child restraint systems meet the requirements. For manufacturers producing child restraints that do not meet the minimum strength requirements, it will not be difficult for these manufacturers to obtain and use complying webbing on their child restraints. Further, the agency is providing more than a year for manufacturers that do not comply to obtain and incorporate compliant webbing.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this rule will not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that the rule will not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary

impact statement. The rule will not have any substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials.

Civil Justice Reform (E.O. 12988)

Today's final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not require any collections of information as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical (Pub. L. 104–113, codified at 15 U.S.C. 272). Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

Today's final rule continues to rely on SAE J4c with regard to the exposed webbing requirements. There are no other relevant voluntary consensus standards available at this time. However, the agency will consider any such standards when they become available.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with a base year of 1995). Adjusting this amount by the gross domestic product price deflator for the year 2004 results in about $118 million (115.5 ÷ 98.11 × $100 million).

The agency has concluded that this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $118 million annually. Accordingly, no Unfunded Mandates assessment has been prepared.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. S5.4.1 of Section 571.213 is amended by revising S5.4.1 and S5.4.1.1, and by adding S5.4.1.2 and S5.4.1.3, to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.4.1 *Performance requirements.*

S5.4.1.1 *Child restraint systems manufactured before September 1, 2007.* The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall—

(a) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS 209. A mass of 2.35 ± .05 kg shall be used in the test procedure in S5.1(d) of FMVSS 209 for webbing, including webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system, except that a mass of 1.5 +/− .05 kg shall be used for webbing in pelvic and upper torso restraints of a belt assembly used in a child restraint system. The mass is shown as (B) in Figure 2 of FMVSS 209.

(b) Meet the requirements of S4.2 (e) and (f) of FMVSS No. 209 (§ 571.209); and

(c) If contactable by the test dummy torso when the system is tested in accordance with S6.1, have a width of not less than 1½ inches when measured in accordance with S5.4.1.3.

S5.4.1.2 *Child restraint systems manufactured on or after September 1, 2007.* The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall—

(a) Have a minimum breaking strength for new webbing of not less than 15,000 N in the case of webbing used to secure a child restraint system to the vehicle, including the tether and lower anchorages of a child restraint anchorage system, and not less than 11,000 N in the case of the webbing used to secure a child to a child restraint system when tested in accordance with S5.1 of FMVSS No. 209. Each value shall be not less than the 15,000 N and 11,000 N applicable breaking strength requirements, but the median value shall be used for determining the retention of breaking strength in paragraphs (b)(1), (c)(1), and (c)(2) of this section S5.4.1.2. ''New webbing'' means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in this section.

(b)(1) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 75

percent of the new webbing strength, when tested in accordance with S5.1(b) of FMVSS 209.

(2) A mass of 2.35 ± .05 kg shall be used in the test procedure in S5.1(d) of FMVSS 209 for webbing, including webbing to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system, except that a mass of 1.5 ± .05 kg shall be used for webbing in pelvic and upper torso restraints of a belt assembly used in a child restraint system. The mass is shown as (B) in Figure 2 of FMVSS 209.

(c)(1) After exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 60 percent of the new webbing, and shall have a color retention not less than No. 2 on the Geometric Gray Scale published by the American Association of Textile Chemists and Colorists, Post Office Box 886, Durham, NC.

(2) After being subjected to micro-organisms and tested by the procedures specified in S5.1(f) of FMVSS 209 (§ 571.209), shall have a breaking strength not less than 85 percent of the new webbing.

(d) If contactable by the test dummy torso when the system is tested in accordance with S6.1, have a width of not less than 1½ inches when measured in accordance with S5.4.1.3.

S5.4.1.3 *Width test procedure.* Condition the webbing for 24 hours in an atmosphere of any relative humidity between 48 and 67 percent, and any ambient temperature between 70° and 77 °F. Measure belt webbing width under a tension of 5 pounds applied lengthwise.

* * * * *

Issued: May 31, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. E6–8727 Filed 6–6–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 060227052–6139–02; I.D. 021606B]

RIN 0648–AU06

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing Amendment 20 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner crabs (FMP). This action amends the Crab Rationalization Program (hereinafter referred to as the Program) to modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab *Chionoecetes bairdi* (Tanner crab) to allow this species to be managed as two separate stocks. This action is necessary to increase resource conservation and economic efficiency in the crab fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

DATES: Effective on July 7, 2006.

ADDRESSES: Copies of Amendment 20, the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Records Office, and on the Alaska Region, NMFS, website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). Amendments 18 and 19 to the FMP to implement the Program. A final rule implementing these amendments was published on March 2, 2005 (70 FR 10174). NMFS also published three corrections to the final rule (70 FR 13097; March 18, 2005), (70 FR 33390; June 8, 2005) and (70 FR 75419; December 20, 2005).

In October 2005, the Council adopted Amendment 20 to the FMP. The Notice of Availability for Amendment 20 was published in the **Federal Register** on February 27, 2006 (71 FR 9770). NMFS approved Amendment 20 on May 25, 2006.

NMFS published a proposed rule to implement Amendment 20 in the **Federal Register** on March 21, 2006 (71 FR 14153). Public comments on the proposed rule were solicited through May 5, 2006. No public comments were received and therefore, no changes were made from the proposed to final rule.

A description of this action is provided in the preamble to the proposed rule (March 21, 2006, 71 FR 14153) and is briefly summarized here. Under the Program, harvester quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) currently are issued for one Tanner crab fishery. The State of Alaska (State), however, has determined that eastern Bering Sea Tanner crab should be separated into two stocks and managed as two separate fisheries to avoid localized depletion by the commercial fishery, particularly of legal-sized males in the Pribilof Islands area. The Program and the final rule implementing it allocated shares of the Tanner crab fishery in the Bering Sea, but did not separately distinguish the management of these two stocks.

Amendment 20 to the FMP modifies the allocation of harvesting shares and processing shares for Bering Sea Tanner crab to accommodate management of geographically separate Tanner crab fisheries. This action allocates QS and PQS and the resulting IFQ and IPQ for two Tanner crab fisheries, one east of 166° W. longitude and the other west of 166° W. longitude. Revision of the QS and PQS allocations resolves the current inconsistency between current allocations and management of the Tanner crab species as two stocks. This change will reduce administrative costs for managers and the operational costs of harvesters and processors while increasing their flexibility.

This action does not alter the basic structure or management of the Program. Reporting, monitoring, fee

collection, and other requirements to participate in the Tanner crab fishery are unchanged. This action does not increase the number of harvesters or processors in the Tanner crab fisheries or the amount of crab that may be harvested currently. This action does not affect regional delivery requirements or other restrictions on harvesting and processing Tanner crab that currently apply.

NMFS will reissue Tanner crab QS and PQS. Currently, Tanner crab is issued as Bering Sea Tanner (BST) QS and BST PQS. For each share of BST QS held, a person will be issued one share of eastern Bering Sea Tanner crab (EBT) QS, and one share of western Bering Sea Tanner crab (WBT) QS. Similarly, for each BST PQS held, a person will be issued one share of EBT PQS, and one share of WBT PQS. EBT QS and PQS would result in IFQ and IPQ that could be used for the Tanner crab fishery occurring east of 166° W. longitude; WBT QS and PQS would result in IFQ and IPQ that could be used for the Tanner crab fishery occurring west of 166° W. longitude. This reissuance of Tanner crab QS and PQS will not increase the number of initially issued Tanner crab quota holders. Tanner crab QS and PQS holders will receive IFQ and IPQ in a specific fishery only if that specific Tanner crab fishery has a harvestable surplus and a total allowable catch (TAC) assigned by the State.

NMFS will reissue Tanner crab QS and PQS after the end of the current Tanner crab fishing season (March 31, 2006), and prior to the date when the State announces the TACs for the 2006/2007 crab fishing seasons (October 1, 2006). This will reduce any potential conflict with the current Tanner crab fishery.

Classification

The Regional Administrator determined that Amendment 20 is necessary for the conservation and management of the Bering Sea crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FRFA which incorporates the IRFA, a summary of the analyses completed to support the action, and public comments received on the IRFA. A copy of this analysis is available from NMFS (see **ADDRESSES**). The following summarizes the FRFA.

The FRFA evaluates the impacts of this rule. The FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601–612). It specifically addresses the requirements at section 604(a).

Issues Raised by Public Comments on the IRFA

The proposed rule was published in the **Federal Register** on March 21, 2006 (71 FR 14153). An IRFA was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on May 5, 2006. No public comment were received on the IRFA. No changes were made to the final rule from the proposed rule.

Need for and Objectives of This Action

The reasons for this action and the objectives and legal basis for the rule are discussed in the preamble to this rule and are not repeated here.

Number and Description of Small Entities Affected by the Rule

The FRFA contains a description and estimate of the number of directly affected small entities. Estimates of the number of small harvesting entities under the Program are complicated by several factors. Each eligible captain will receive an allocation of QS under the Program. A total of 186 captains received allocations of Tanner crab QS for the 2005–2006 fishery. In addition, 269 allocations of QS to Limited License Program (LLP) license holders were made under the Program, for a total of 455 QS allocations in the Tanner crab fisheries. Because some persons participated as LLP holders and captains and others received allocations from the activities of multiple vessels, only 294 unique persons received QS. Of those entities receiving QS, 287 are small entities because they either generated $4.0 million or less in gross revenue, or they are independent entities not affiliated with a processor. Estimates of gross revenues for purposes of determining the number of small entities relied on the low estimates of prices from the arbitration reports based on the 2005/2006 fishing season.

Allocations of Tanner crab PQS under the Program were made to 20 processors. Of these PQS recipients, nine are estimated to be large entities, and 11 are small entities. Estimates of large entities were made based on available records of employment and the analysts' knowledge of foreign ownership of processing companies. These totals exclude catcher/processors, which are included in the LLP holder discussion.

Recordkeeping and Reporting Requirements

The reporting, recordkeeping, and other compliance requirements of the final rule will not change from those of the Program with respect to QS, IFQ, PQS, and IPQ. As such, this action requires no additional reporting, recordkeeping, or other compliance requirements.

Description of Significant Alternatives and Description of Steps Taken to Minimize the Significant Economic Impacts on Small Entities

The EA/RIR/FRFA prepared for this action analyzed a suite of three alternatives for harvesters, and a separate suite of three alternatives for processors. Alternative 1 for harvesters and processors, the no action alternative, would maintain the existing inconsistency between Federal allocations supporting a single Tanner crab fishery and State management of two stocks of Tanner crab. For harvesters, the difference in effects of the revised allocation alternatives on the social and economic environment is primarily distributional. Under the preferred harvester alternative (Alternative 2), an eligible participant receives an allocation in both fisheries based on all qualifying catches regardless of where that catch occurred. Under harvester Alternative 3, a harvester would receive an allocation in each fishery based on historic catch from the area of the fishery. Under this alternative, a person's allocation would be skewed toward the area in which the person had greater catch relative to other participants.

For processors, the choice of revised allocation alternatives would have operational and efficiency effects. Under the preferred processor alternative (Alternative 2), PQS and IPQ pools are created for the two fisheries. Share holders can trade shares in the fisheries independently to establish long-term relationships in each fishery. Under processor Alternative 3, PQS would generate an annual allocation of IPQ that could be used in either fishery. Since TACs in the fisheries may fluctuate independently, harvesters that do not hold equal percentages of the pools in both fisheries will be unable to establish fixed long-term relationships with a processor for all their shares. Instead, these participants would need to modify their relationships if TACs change independently in the different Tanner crab fisheries. This restructuring of relationships could reduce efficiency in the Tanner crab fisheries by adding to transaction costs of participants.

Although the different allocations under consideration in this action would have distributional and efficiency impacts for individual participants, in no case are these aggregated impacts expected to be substantial. In all instances, similar numbers of participants would receive allocations.

Alternative 1 for harvesters would create inefficiencies for harvesters by failing to provide a mechanism to ensure that quota is managed for each stock separately in accordance with biomass distribution. Preferred Alternative 2 provides additional flexibility to industry participants to hold quota to fish specific Tanner crab fisheries and reduce potential conflicts among participants that may occur if one quota is used to provide harvesting privileges to two distinct stocks. Alternative 3 would skew the allocation of a harvesters QS to a specific region based on historic catch that may not be reflective of current fishing practices, and could result in increased transaction costs for harvesters to transfer QS or IFQ to fit their current fishing practices.

Alternative 1 for processors would fail to provide an opportunity for processors to establish long term relationships with specific harvesters for specific Tanner crab deliveries. This could increase operational costs. Although none of the alternatives has substantial negative impacts on small entities, preferred Alternative 2 for processors minimizes the potential negative impacts that could arise under Alternatives 1 and 3 for processors by increasing their ability to establish fixed long-term relationships with a harvester for delivery of their IFQ.

Differences in efficiency that could arise among the harvester and processor alternatives are likely to affect most participants in a minor way having an overall insubstantial impact. As a consequence, none of the alternatives is expected to have any significant economic or socioeconomic impacts.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the Internet at *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 1, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

■ 2. In § 680.4, revise paragraphs (b) and (c) to read as follows:

§ 680.4 Permits.

* * * * *

(b) *Crab QS permit.* (1) Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive QS by transfer under § 680.41. Once issued, a crab QS permit is valid until modified under paragraph (b)(2) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 of this chapter or under 15 CFR part 904. To qualify for a crab QS permit, the applicant must be a U.S. Citizen.

(2) Each unit of Crab QS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of Eastern Bering Sea Tanner crab (EBT) QS and one unit of Western Bering Sea Tanner crab (WBT) QS.

(c) *Crab PQS permit.* (1) Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a crab PQS permit is valid until modified under paragraph (c)(2) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 of this chapter or under 15 CFR part 904.

(2) Each unit of Crab PQS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of Eastern Bering Sea Tanner crab (EBT) PQS and one unit of Western Bering Sea Tanner crab (WBT) PQS.

* * * * *

§§ 680.40 and 680.41 [Amended]

■ 3. In the table below, at each of the locations shown in the ''LOCATION'' column, remove the phrase indicated in the ''REMOVE'' column and replace it with the phrase indicated in the ''ADD'' column:

LOCATION	REMOVE	ADD
§ 680.40(b)(2)(ii)(A)	BST	EBT or WBT
§ 680.40(d)(2)(iv)(B)	BST	EBT or WBT
§ 680.41(l)(1)(i)	BST	EBT, WBT,

■ 4. In § 680.40, revise paragraph (b)(2)(iii) to read as follows:

§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) issuance.

* * * * *

(b) * * *

(2) * * *

(iii) The regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(A) EAG	X	X		
(B) WAG			X	X
(C) EBT				X
(D) WBT				X
(E) BSS	X	X		

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(F) BBR	X	X		
(G) PIK	X	X		
(H) SMB	X	X		
(I) WAI		X		

* * * * *

■ 5. In § 680.42, revise paragraph (a)(2)(i), (a)(3)(i), (a)(4)(i), and (c)(1) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ and IPQ.

(a) * * *

(2) * * *

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0% = 3,880,000	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000	2.0% = 600,000
(C) Percent of the initial QS pool for EBT	1.0% = 1,940,000	2.0% = 120,000
(D) Percent of the initial QS pool for WBT	1.0% = 1,940,000	2.0% = 120,000
(E) Percent of the initial QS pool for PIK	2.0% = 582,000	4.0% = 36,000
(F) Percent of the initial QS pool for SMB	2.0% = 582,000	4.0% = 36,000
(G) Percent of the initial QS pool for EAG	10.0% = 970,000	20.0% = 60,000
(H) Percent of the initial QS pool for WAG	10.0% = 3,880,000	20.0% = 240,000
(I) Percent of the initial QS pool for WAI	10.0% = 5,820,000	20.0% = 360,000

* * * * *

(3) * * *

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 10.0 percent of the initial QS pool for PIK	2,910,000
(F) 10.0 percent of the initial QS pool for SMB	2,910,000
(G) 20.0 percent of the initial QS pool for EAG	1,940,000
(H) 20.0 percent of the initial QS pool for WAG	7,760,000
(I) 20.0 percent of the initial QS pool for WAI	11,640,000

* * * * *

(4) * * *

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000

Fishery	CVO/CPO Use Cap in QS Units
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 5.0 percent of the initial QS pool for PIK	1,455,000
(F) 5.0 percent of the initial QS pool for SMB	1,455,000
(G) 5.0 percent of the initial QS pool for EAG	485,000
(H) 5.0 percent of the initial QS pool for WAG	1,940,000
(I) 5.0 percent of the initial QS pool for WAI	2,910,000

* * * * *

(c) * * *

(1) Except for vessels that participate solely in a crab harvesting cooperative as described under § 680.21 and under the provisions described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

(i) 2.0 percent for BSS;
(ii) 2.0 percent for BBR;
(iii) 2.0 percent for EBT;
(iv) 2.0 percent for WBT;
(v) 4.0 percent for PIK;
(vi) 4.0 percent for SMB;
(vii) 20.0 percent for EAG;
(viii) 20.0 percent for WAG; or
(ix) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

* * * * *

■ 6. Revise Table 1, to part 680 to read as follows:

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES

Fishery Code	CR Fishery	Geographic Area
BBR	Bristol Bay red king crab (*Paralithodes camtshaticus*)	In waters of the EEZ with: (1) *A northern boundary* of 58°30′ N. lat., (2) *A southern boundary* of 54°36′ N. lat., and (3) *A western boundary* of 168° W. long. and including all waters of Bristol Bay.
BSS	Bering Sea Snow crab (*Chionoecetes opilio*)	In waters of the EEZ with: (1) *A northern and western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (2) *A southern boundary* of 54°30′ N. lat. to 171° W. long., and then south to 54°36′ N. lat.
EAG	Eastern Aleutian Islands golden king crab (*Lithodes aequispinus*)	In waters of the EEZ with: (1) *An eastern boundary* the longitude of Scotch Cap Light (164°44′ W. long.) to 53°30′ N. lat., then West to 165° W. long., (2) *A western boundary* of 174° W. long., and (3) *A northern boundary* of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., then west to 174° W. long.
EBT	Eastern Bering Sea Tanner crab (*Chionoecetes bairdi*)	In waters of the EEZ with: (1) *A western boundary* the longitude of 166° W. long., (2) *A northern boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *A southern boundary* of 54°30'N. lat.

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES—Continued

Fishery Code	CR Fishery	Geographic Area
PIK	Pribilof red king and blue king crab (*Paralithodes camtshaticus* and *P. platypus*)	In waters of the EEZ with: (1) *A northern boundary* of 58°30′ N. lat., (2) *An eastern boundary* of 168° W. long., and (3) *A southern boundary* line from 54°36′ N. lat., 168° W. long., to 54°36′ N. lat., 171° W. long., to 55°30′ N. lat., 171° W. long., to 55°30′ N. lat., 173°30′ E. lat., and then westward to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB	St. Matthew blue king crab (*Paralithodes platypus*)	In waters of the EEZ with: (1) *A northern boundary* of 62° N. lat., (2) *A southern boundary* of 58°30′ N. lat., and (3) *A western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAG	Western Aleutian Islands golden king crab (*Lithodes aequispinus*)	In waters of the EEZ with: (1) *An eastern boundary* the longitude 174° W. long., (2) *A western boundary* the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *A northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the U.S.-Russian Convention line of 1867.
WAI	Western Aleutian Islands red king crab (*Paralithodes camtshaticus*)	In waters of the EEZ with: (1) *An eastern boundary* the longitude 179° W. long., (2) *A western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *A northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WBT	Western Bering Sea Tanner crab (*Chionoecetes bairdi*)	In waters of the EEZ with: (1) *An eastern boundary* the longitude of 166° W. long., (2) *A northern and western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *A southern boundary* of 54°30′ N. lat. to 171° W. long., and then south to 54°36′ N. lat.

* * * * *

■ 7. Revise Tables 7,8, and 9 to part 680 to read as follows:

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for QS	**Column C:** Eligibility Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.40(c)(2):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	(1) October 15–20, 1999. (2) October 16–20, 2000. (3) October 15–18, 2001.	4 years
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	(1) April 1–8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for QS	**Column C:** Eligibility Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
3. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 25, 2000.	(1) September 1 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5 years
4. Eastern Bering Sea Tanner crab (EBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 1–28, 1998.	3 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 15–28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60 feet (18.3 m) LOA at the time of harvest are exempt from this requirement.	4 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for QS	**Column C:** Eligibility Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; (5) September 15–26, 1998.	3 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; and (5) September 15–26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
7. Western Aleutian Islands brown king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 21, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	(1) September 1, 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5 years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	3 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for QS	**Column C:** Eligibility Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
9. Western Bering Sea Tanner crab (WBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
BBR - Bristol Bay red king crab	400,000,000	400,000,000
BSS - Bering Sea snow crab (*C. opilio*)	1,000,000,000	1,000,000,000
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
EBT - Eastern Bering Sea Tanner crab (*C. bairdi*)	200,000,000	200,000,000
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAG - Western Aleutian Islands golden king crab	40,000,000	40,000,000
WAI - Western Aleutian Islands red king crab	60,000,000	60,000,000
WBT - Western Bering Sea Tanner crab (*C. bairdi*)	200,000,000	200,000,000

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery:	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Bristol Bay red king crab (BBR)	*3 years of the 3-year QS base period beginning on:* (1) November 1–5, 1997; (2) November 1–6, 1998; and (3) October 15–20, 1999.
Bering Sea snow crab (BSS)	*3 years of the 3-year period beginning on:* (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 20, 1998; and (3) January 15, 1999 through March 22, 1999.
Eastern Aleutian Island golden king crab (EAG)	*4 years of the 4-year base period beginning on:* (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY—Continued

Column A: For each crab QS fishery:	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Eastern Bering Sea Tanner crab (EBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Pribilof Islands red and blue king crab (PIK)	*3 years of the 3-year period beginning on:* (1) September 15–26, 1996; (2) September 15–29, 1997; and (3) September 15–28, 1998.
St. Matthew blue king crab (SMB)	*3 years of the 3-year period beginning on:* (1) September 15–23, 1996; (2) September 15–22, 1997; and (3) September 15–26, 1998.
Western Aleutian Island golden king crab (WAG)	*4 years of the 4-year base period beginning on:* (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.
Western Bering Sea Tanner crab (WBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.

[FR Doc. E6–8861 Filed 6–6–06; 8:45 am]

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Proposed Rules

Federal Register
Vol. 71, No. 109
Wednesday, June 7, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 767–200 and –300 series airplanes. For certain airplanes, the original NPRM would have required repetitive inspections for discrepancies of the tube assemblies and insulation of the metered fire extinguisher system and the bleed air duct couplings of the auxiliary power unit (APU) located in the aft cargo compartment; and corrective actions if necessary. For certain other airplanes, the original NPRM would have required a one-time inspection for sufficient clearance between the fire extinguishing tube and the APU bleed air duct in the aft cargo compartment, and modification if necessary. The original NPRM resulted from one report indicating that an operator found a hole in the discharge tube assembly for the metered fire extinguishing system; and another report indicating that an operator found chafing of the fire extinguishing tube against the APU duct that resulted in a crack in the tube. This action revises the original NPRM by expanding the applicability and adding an inspection for signs of chafing and to verify sufficient clearance between the fire extinguisher system and the bleed air duct couplings of the APU. We are proposing this supplemental NPRM to prevent fire extinguishing agent from leaking out of the tube assembly in the aft cargo compartment which, in the event of a fire in the aft cargo compartment, could result in an insufficient concentration of fire extinguishing agent, and consequent inability of the fire extinguishing system to suppress the fire.

DATES: We must receive comments on this supplemental NPRM by July 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Boeing Model 767–200 and –300 series airplanes. The original NPRM was published in the **Federal Register** on July 8, 2005 (70 FR 39433). For certain airplanes, the original NPRM proposed to require repetitive inspections for discrepancies of the tube assemblies and insulation of the metered fire extinguisher system and the bleed air duct couplings of the auxiliary power unit (APU) located in the aft cargo compartment; and corrective actions if necessary. For certain other airplanes, the original NPRM proposed to require a one-time inspection for sufficient clearance between the fire extinguishing tube and the APU bleed air duct in the aft cargo compartment, and modification if necessary.

Actions Since Original NPRM was Issued

Since we issued the original NPRM, Boeing has published Boeing Alert Service Bulletin 767–26A0130, Revision 1, dated December 15, 2005. (The original issue, dated December 2, 2004, was referenced in the original NPRM as the appropriate source of service information for accomplishing certain actions.) Revision 1 includes the following changes to the Accomplishment Instructions of the original issue:

- Adds airplanes to the effectivity and divides affected airplanes into Groups 1 through 7.
- Adds concurrent requirements for Group 3 through 7 airplanes.
- Adds an inspection for signs of chafing and to verify that there is sufficient clearance between the fire extinguisher system and the bleed air duct couplings of the APU.

The corrective action includes the following:

- If the clearance between the fire extinguisher tube assembly and the couplings is insufficient, either repeat the inspection or move the assembly so there is a minimum clearance of 0.75 inch.
- If the fire extinguisher tube assembly shows signs of chafing or contact with the couplings, repair or replace any damaged tube assembly with a new assembly; and move the tube assemblies and/or duct couplings to allow for a minimum clearance of 0.75 inch, if clearance is insufficient. The installation of tube assemblies to allow minimum clearance eliminates the need for the repetitive inspections, provided initial inspections and any necessary corrective action have been done.
- If the insulation shows signs of chafing or contact with the couplings, replace any damaged insulation with new insulation.
- We have revised paragraph (f) of the supplemental NPRM to refer to Revision 1 of the service bulletin, and we have added a new paragraph (g) to give credit for actions done before the effective date of the AD per the original service bulletin.

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

Boeing concurs with the contents of the original NPRM.

Request To Add Revised Service Bulletin

Japan Airlines states that, according to Boeing, Revision 1 of Boeing Alert Service Bulletin 767–26A0130 will be issued on September 22, 2005, and it wants to make sure that Revision 1 will be referenced in the supplemental NPRM. Japan Airlines has confirmed with Boeing that, in certain locations, the clearance between the couplings of the APU bleed air duct and the fire extinguisher tube, as specified in the original issue of the service bulletin, does not completely satisfy the requirements in the original NPRM.

We agree with the commenter and, as noted above, we have added Boeing Alert Service Bulletin 767–26A0130, Revision 1, dated December 15, 2005, to this supplemental NPRM.

Request To Add Certain Requirements

Air Transport Association (ATA), on behalf of Delta Airlines, requests that the original NPRM specify that Boeing Service Bulletin 767–26–0118, Revision 2, dated December 21, 2004, provides terminating action for the actions in Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002.

Delta states that the ''Relevant Service Information'' paragraph specifies that Alert Service Bulletin 767–26A0123, refers to Service Bulletin 767–26–0118, Revision 2, as the appropriate source of service information for accomplishing the modification of the fire extinguishing tube assembly. Delta adds that the ''Applicability'' and ''Repetitive Inspections'' paragraphs do not address Service Bulletin 767–26–0118. Delta notes that they have scheduled modification of its airplanes per Service Bulletin 767–26–0118, rather than accomplishing the inspections per Service Bulletin 767–26A0123, and then addressing potential rework. Delta recommends that we add notes after paragraph (f) of the supplemental NPRM which specify that Service Bulletin 767–26–0118 constitutes terminating action for Service Bulletin 767–26A0123.

We partially agree. We agree that the modification specified in Service Bulletin 767–26–0118 constitutes terminating action for the inspections specified in Service Bulletin 767–26A0123; however, we do not agree to include a note adding that action to the supplemental NPRM. Accomplishing the modification is an on-condition action and is not required if there is sufficient clearance between the APU duct and the fire extinguisher tube. We do agree to add a note after paragraph (f) which specifies that Service Bulletin 767–26–0118 is the appropriate source of service information for accomplishing the modification of the fire extinguishing tube assembly. We have added Note 1 to this supplemental NPRM accordingly.

Request To Clarify Repetitive Inspections

ATA, on behalf of Delta, requests that we clarify the repetitive inspections and explain why they are necessary.

Delta states that the inspections specified in paragraph (f)(1) of the original NPRM are to be repeated per Boeing Alert Service Bulletin 767–26A0130; however, the inspection specified in paragraph (f)(2) of the NPRM, which is to be done per Boeing Alert Service Bulletin 767–26A0123, does not specify repeating. Delta adds that neither Service Bulletin 767–26A0130 or 767–26A0123 recommend accomplishing the inspections on a repetitive basis. Delta notes that both service bulletins address a potential contact or chafing condition that appears to be related to relative installations, and would not be expected to change; therefore, repetitive inspections are not warranted. Delta adds that the title above paragraph (f) is ''Repetitive Inspections,'' which would imply that both paragraphs (f)(1) and (f)(2) have repetitive inspection requirements, but only paragraph (f)(1) requires repetitive inspections. Delta does not consider this a condition where repetitive inspections are required; however, if repetitive inspections are warranted, Delta asks for clarification of when and why repetitive inspections are required.

We agree that Service Bulletin 767–26A0123 does not specify repetitive inspections; however, Service Bulletin 767–26A0130 does include repetitive inspections as an option if no chafing or contact with the couplings of the APU bleed air duct is found, and support provisions are not in the correct location. The other option is to correct the location as a terminating action. If the couplings of the APU bleed air duct and support provisions are correctly installed (installation of the tube assembly in the correct location), and no contact or chafing is found, no further action is required by paragraph (f)(1). We also agree that to better clarify the header preceding paragraph (f) ''Repetitive Inspections'' it should be changed to ''Inspections and Corrective Actions.'' We have changed the header preceding paragraph (f) of this supplemental NPRM accordingly.

Request To Change Work Hours

ATA, on behalf of US Airways, requests that the work hour estimate be revised and notes that the cost does not include potentially significant costs that are dependent on the findings of the proposed inspection.

US Airways does not agree with the work hour assessment in the original NPRM. US Airways states that the required work hours for the inspections and testing specified in the NPRM would take a total of 8 work hours, per the referenced service bulletins, amounting to a total of $520 per airplane, not $260 per airplane. US Airways notes that the proposed cost of compliance does not address the cost of damage findings from the inspections, which could add up to 23.5 additional work hours per airplane, increasing the cost up to $1,527 per airplane.

We acknowledge the commenters' concerns, but don't agree to change the supplemental NPRM. The cost estimate specified in the original NPRM reflects the work hour estimate provided by the manufacturer for the inspections and varies according to the applicable model or group. Further, we do not agree to include the cost of repairing damage findings. Corrective actions are conditional based on the inspection findings. The information in the Costs of Compliance section in an AD action is limited to the cost of actions actually required by the AD. That section does not consider the costs of conditional actions (e.g., ''repair, if necessary''). Regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. In addition, we have removed the cost estimate for the functional test because that test is only accomplished as part of the corrective actions.

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we found it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The Costs of Compliance section, below, reflects this increase in the specified hourly labor rate.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Differences Between the Supplemental NPRM and New Service Information

Boeing Alert Service Bulletin 767–26A0130, Revision 1, recommends concurrently accomplishing the service bulletins specified in the table below; however, this supplemental NPRM would not include that requirement. The concurrent service bulletins describe procedures for installing a metered fire extinguishing system, but this proposed AD is only applicable to airplanes that already have that system installed.

CONCURRENT SERVICE BULLETINS

Group	Boeing service bulletin
3	767–26–0016
4	767–26–0027
5	767–26–0034
6	767–26–0058
7	767–26–0070

Costs of Compliance

There are about 749 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection in Service Bulletin 767–26A0123	1	$80	None	$80	292	$23,360
Inspection in Service Bulletin 767–26A0130, Revision 1	5	80	None	400	292	116,800

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have Federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes; certificated in any category; with a metered fire extinguisher system in the aft cargo compartment.

Unsafe Condition

(d) This AD was prompted by one report indicating that an operator found a hole in the discharge tube assembly for the metered fire extinguishing system; and another report indicating that an operator found chafing of the fire extinguishing tube against the auxiliary power unit (APU) duct that resulted in a crack in the tube. We are issuing this AD to prevent fire extinguishing agent from leaking out of the tube assembly in the aft cargo compartment which, in the event of a fire in the aft cargo compartment, could result in an insufficient concentration of fire extinguishing agent, and consequent inability of the fire extinguishing system to suppress the fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Corrective Actions

(f) Within 24 months or 8,000 flight hours after the effective date of this AD, whichever is first: Accomplish the actions required by paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For airplanes identified in Boeing Alert Service Bulletin 767–26A0130, Revision 1, dated December 15, 2005: Perform detailed and general visual inspections for discrepancies of the fire extinguishing tube assemblies between STA 1197 and STA 1340, and the insulation of the metered fire extinguisher system and the bleed air duct couplings of the APU located in the aft cargo compartment, and any applicable corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–26A0130, Revision 1, dated December 15, 2005. Do all applicable corrective actions before further flight in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 24 months or 8,000 flight hours, whichever is first. Installation of the tube assembly in the correct location, in accordance with the service bulletin, terminates the repetitive inspections for that assembly only.

(2) For airplanes identified in Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002: Perform a general visual inspection for sufficient clearance between the fire extinguishing tube and the APU duct on the left sidewall from station 1355 through 1365 inclusive, and do all applicable modifications, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002. Do all applicable modifications before further flight.

Note 1: Boeing Alert Service Bulletin 767–26A0123 refers to Boeing Service Bulletin 767–26–0118, Revision 2, dated December 21, 2004, as the appropriate source of service information for accomplishing the modification of the fire extinguishing tube assembly.

Credit for Actions Accomplished Previously

(g) Accomplishing the inspections and corrective actions required by paragraph (f)(1) of this AD before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 767–26A0130, dated December 2, 2004, is considered acceptable for compliance with the corresponding actions in paragraph (f)(1).

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 26, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8823 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24858; Airspace Docket 06–ASO–8]

Proposed Establishment of Class E Airspace; Mooresville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Proposed Establishment of Class E airspace at Mooresville, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Runway (RWY) 14 has been developed for Lake Norman Airpark, As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Lake Norman Airpark. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 2590–0001. You must identify the docket number FAA–2005–23075; Airspace Docket 05–ASO–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

Any informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–24858/Airspace Docket No. 06–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Mooresville, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Mooresville, NC [NEW]

Lake Norman Airpark, NC
(Lat. 35°36′50″ N, long. 80°53′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.3—radius of Lake Norman Airpark; excluding that airspace within the Statesville, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 31, 2006.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 06–5183 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

Announcement of Policy for Landing Performance Assessments After Departure for All Turbojet Operators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of policy statement.

SUMMARY: The following advance notice of policy and information would provide clarification and guidance for all operators of turbojet aircraft for establishing operators' methods of ensuring that sufficient landing distance exists for safely making a full stop landing with an acceptable safety margin, on the runway to be used, in the conditions existing at the time of arrival, and with the deceleration means and airplane configuration to be used.

FOR FURTHER INFORMATION CONTACT: Jerry Ostronic, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, and Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Overview

The Federal Aviation Administration (FAA) considers a 15% margin between the expected actual (unfactored) airplane landing distance and the landing distance available at the time of arrival as the minimum acceptable safety margin for normal operations. Accordingly, the agency intends to issue Operations Specification/Management Specification (OpSpec/MSpec) C082 later this month implementing the requirements discussed in this notice.

The FAA acknowledges that there are situations where the flightcrew needs to know the absolute performance capability of the airplane. These situations include emergencies or abnormal and irregular configurations of the airplane such as engine failure or flight control malfunctions. In these circumstances, the pilot must consider whether it is safer to remain in the air or to land immediately and must know the actual landing performance capability (without an added safety

margin) when making these evaluations. This policy is not intended to curtail such evaluations from being made for these situations.

This policy does not apply to Land and Hold Short Operations (LAHSO).

Definitions

The following definitions are specific to this policy and may differ with those definitions contained in other published references.

Actual Landing Distance. The landing distance for the reported meteorological and runway surface conditions, airplane weight, airplane configuration, use of autoland or a Head-up Guidance System, and ground deceleration devices planned to be used for the landing. It does not include any safety margin (i.e., it is unfactored) and represents the best performance the airplane is capable of for the conditions.

Airplane Ground Deceleration Devices. Any device used to aid in the onset or rate of airplane deceleration on the ground during the landing roll out. These would include, but not be limited to: brakes (either manual braking or the use of autobrakes), spoilers, and thrust reversers.

At Time of Arrival. For the purpose of this notice and related OpSpec/MSpec means a point in time as close to the airport as possible consistent with the ability to obtain the most current meteorological and runway conditions considering pilot workload and traffic surveillance, but no later than the commencement of the approach procedures or visual approach pattern.

Braking Condition Terms. The following braking condition terms are widely used in the aviation industry and are furnished by air traffic controllers when available. The definitions provided below are consistent with how these terms are used in this notice.

Good—More braking capability is available than is used in typical deceleration on a non-limiting runway (i.e., a runway with additional stopping distance available). However, the landing distance will be longer than the certified (unfactored) dry runway landing distance, even with a well executed landing and maximum effort braking.

Fair/Medium—Noticeably degraded braking conditions. Expect and plan for a longer stopping distance such as might be expected on a packed or compacted snow-covered runway.

Poor—Very degraded braking conditions with a potential for hydroplaning. Expect and plan for a significantly longer stopping distance such as might be expected on an ice-covered runway.

Nil—No braking action and poor directional control can be expected.

Note: Conditions specified as ''nil'' are not considered safe, therefore operations under conditions specified as such will not be conducted. Do not attempt to operate on surfaces reported or expected to have nil braking action.

Factored Landing Distance. The certificated landing distance increased by the preflight planning safety margin additives.

Landing Distance Available. The length of the runway declared available for landing. This distance may be shorter than the full length of the runway.

Meteorological Conditions. Any meteorological condition that may affect either the air or ground portions of the landing distance. Examples may include wind direction and velocity, pressure altitude, temperature, and visibility. An example of a possible effect that must be considered includes crosswinds affecting the amount of reverse thrust that can be used on airplanes with tail mounted engines due to rudder blanking effects.

Reliable Braking Action Report. For the purpose of this notice and related OpSpec/MSpec, means a braking action report submitted from a turbojet airplane with landing performance capabilities similar to those of the airplane being operated.

Runway Contaminant Conditions. The type and depth (if applicable) of the substance on the runway surface, e.g., water (wet), standing water, dry snow, wet snow, slush, ice, sanded, or chemically treated.

Runway Friction or Runway Friction Coefficient. The resistance to movement of an object moving on the runway surface as measured by a runway friction measuring device. The resistive force resulting from the runway friction coefficient is the product of the runway friction coefficient and the weight of the object.

Runway Friction Enhancing Substance. Any substance that increases the runway friction value.

Safety Margin. The length of runway available beyond the actual landing distance. Safety margin can be expressed in a fixed distance increment or a percentage increase beyond the actual landing distance required.

Unfactored Landing Distance. The certificated landing distance without any safety margin additives.

Background

After any serious aircraft accident or incident, the FAA typically performs an internal audit to evaluate the adequacy of current regulations and guidance information in areas that come under scrutiny during the course of the accident investigation. The Southwest Airlines landing overrun accident involving a Boeing 737–700 at Chicago Midway Airport in December 2005 initiated such an audit. The types of information that were evaluated in addition to the regulations were FAA orders, notices, advisory circulars, ICAO and foreign country requirements, airplane manufacturer-developed material, independent source material, and the current practices of air carrier operators.

This internal FAA review revealed the following issues:

(1) A survey of operators' manuals indicated that approximately fifty percent of the operators surveyed do not have policies in place for assessing whether sufficient landing distance exists at the time of arrival, even when conditions (including runway, meteorological, surface, airplane weight, airplane configuration, and planned usage of decelerating devices.) are different and worse than those planned at the time the flight was released.

(2) Not all operators who perform landing distance assessments at the time of arrival have procedures that account for runway surface conditions or reduced braking action reports.

(3) Many operators who perform landing distance assessments at the time of arrival do not apply a safety margin to the expected actual (unfactored) landing distance. Those that do are inconsistent in applying an increasing safety margin as the expected actual landing distance increased (i.e., as a percentage of the expected actual landing distance).

(4) Some operators have developed their own contaminated runway landing performance data or are using data developed by third party vendors. In some cases, these data are less conservative than the airplane manufacturer's data for the same conditions. In other cases, an autobrake landing distance chart has been misused to generate landing performance data for contaminated runway conditions. Also, some operators' data have not been kept up to date with the manufacturer's current data.

(5) Credit for the use of thrust reversers in the landing performance data is not uniformly applied and pilots may be unaware of these differences. In one case, the FAA found differences within the same operator from one series of airplane to another within the same make and model. The operator's understanding of the data with respect

to reverse thrust credit, and the information conveyed to pilots, were incorrect for both series of airplanes.

(6) Airplane flight manual (AFM) landing performance data are determined during flight-testing using flight test and analysis criteria that are not representative of everyday operational practices. Landing distances determined in compliance with 14 CFR part 25, section 25.125 and published in the FAA-approved airplane flight manual (AFM) do not reflect operational landing distances (Note: some manufacturers provide factored landing distance data that addresses operational requirements.) Landing distances determined during certification tests are aimed at demonstrating the shortest landing distances for a given airplane weight with a test pilot at the controls and are established with full awareness that operational rules for normal operations require additional factors to be added for determining minimum operational field lengths. Flight test and data analysis techniques for determining landing distances can result in the use of high touchdown sink rates (as high as 8 feet per second) and approach angles of -3.5 degrees to minimize the airborne portion of the landing distance. Maximum manual braking, initiated as soon as possible after landing, is used in order to minimize the braking portion of the landing distance. Therefore, the landing distances determined under section 25.125 are shorter than the landing distances achieved in normal operations.

(7) Wet and contaminated runway landing distance data are usually an analytical computation using the dry, smooth, hard surface runway data collected during certification. Therefore, the wet and contaminated runway data may not represent performance that is achieved in normal operations. This lack of operational landing performance repeatability from the flight test data, along with many other variables affecting landing distance, are taken into consideration in the preflight landing performance calculations by requiring a significant safety margin in excess of the certified (unfactored) landing distance that would be required under those conditions. However, the regulations do not specify a particular safety margin for a landing distance assessment at the time of arrival. This safety margin has been left largely to the operator and/or the flightcrew to determine.

(8) Manufacturers do not provide advisory landing distance information in a standardized manner. However, most turbojet manufacturers make landing distance performance information available for a range of runway or braking action conditions using various airplane deceleration devices and settings under a variety of meteorological conditions. This information is made available in a wide variety of informational documents, dependent upon the manufacturer.

(9) Manufacturer-supplied landing performance data for conditions worse than a dry smooth runway is normally an analytical computation based on the dry runway landing performance data, adjusted for a reduced airplane braking coefficient of friction available for the specific runway surface condition. Most of the data for runways contaminated by snow, slush, standing water, or ice were developed to show compliance with European Aviation Safety Agency and Joint Aviation Authority airworthiness certification and operating requirements. The FAA considers the data developed for showing compliance with the European contaminated runway certification and operating requirements to be acceptable for making landing distance assessments for contaminated runways at the time of arrival.

Guidance: Existing Requirements

A review of the current applicable regulations indicates that the regulations do not specify the type of landing distance assessment that must be performed at the time of arrival, but operators are required to restrict or suspend operations when conditions are hazardous. Failure to ensure an operation can be conducted safely may be considered a careless or reckless operation. The FAA considers it necessary for operators to perform such an assessment in order to ensure that the flight can be safely completed.

Part 121, section 121.195(b), part 135, section 135.385(b), and part 91, section 91.1037(b) and (c) require operators to comply with certain landing distance requirements at the time of takeoff. (Part 125, section 125.49 requires operators to use airports that are adequate for the proposed operation.) These requirements limit the allowable takeoff weight to that which would allow the airplane to land within a specified percentage of the landing distance available on: (1) The most favorable runway at the destination airport under still air conditions; and (2) the most suitable runway in the expected wind conditions. Sections 121.195(d), 135.385(d), and 91.1037(e) further require an additional 15% be added to the required landing distance when the runway is wet or slippery, unless a shorter distance can be shown using operational landing techniques on wet runways. Although an airplane can be legally dispatched under these conditions, compliance with these requirements alone does not ensure that the airplane can land safely within the distance available on the runway actually used for landing in the conditions that exist at the time of arrival, particularly if the runway, runway surface condition, meteorological conditions, airplane configuration, airplane weight, or use of airplane ground deceleration devices is different than that used in the preflight calculation. Part 121, sections 121.533, 121.535, and 121.537, part 135, section 135.77, part 125, section 125.351, and part 91, sections 91.3 and 91.1009 place the responsibility for the safe operation of the flight jointly with the operator, pilot in command, and dispatcher as appropriate to the type of operation being conducted.

Sections 121.195(e) and 135.385(e), allow an airplane to depart even when it is unable to comply with the conditions referred to in item (2) of the paragraph above if an alternate airport is specified where the airplane can comply with conditions referred to in items (1) and (2) of the paragraph above. This provision implies that a landing distance assessment is accomplished before landing to determine if it is safe to land at the destination, or if a diversion to an alternate airport is required.

Part 121, sections 121.601 and 121.603, require dispatchers to keep pilots informed, or for pilots to stay informed as applicable, of conditions, such as airport and meteorological conditions, that may affect the safety of the flight. The operator and flightcrew use this information in their safety of flight decision making. Part 121, sections 121.551, 121.553, and part 135, section 135.69, require an operator, and/or the pilot in command as applicable, to restrict or suspend operations to an airport if the conditions, including airport or runway surface conditions, are hazardous to safe operations. Part 125 section 125.371 prohibits a pilot in command from continuing toward any airport to which it was released unless the flight can be completed safely. A landing distance assessment must be made under the conditions existing at the time of arrival in order to support a determination of whether conditions exist that may affect the safety of the flight and whether operations should be restricted or suspended.

Runway surface conditions may be reported using several types of descriptive terms including: type and depth of contamination, a reading from a runway friction measuring device, an airplane braking action report, or an

airport vehicle braking condition report. Unfortunately, joint industry and multi-national government tests have not established a reliable correlation between runway friction under varying conditions, type of runway contaminants, braking action reports, and airplane braking capability. Extensive testing has been conducted in an effort to find a direct correlation between runway friction measurement device readings and airplane braking friction capability. However, these tests have not produced conclusive results that indicate a repeatable correlation exists through the full spectrum of runway contaminant conditions. Therefore, operators and flightcrews cannot base the calculation of landing distance solely on runway friction meter readings. Likewise, because pilot braking action reports are subjective, flightcrews must use sound judgment in using them to predict the stopping capability of their airplane. For example, the pilots of two identical aircraft landing in the same conditions, on the same runway could give different braking action reports. These differing reports could be the result of differences between the specific aircraft, aircraft weight, pilot technique, pilot experience in similar conditions, pilot total experience, and pilot expectations. Also, runway conditions can degrade or improve significantly in very short periods of time dependent on precipitation, temperature, usage, and runway treatment and could be significantly different than indicated by the last report. Flightcrews must consider all available information, including runway surface condition reports, braking action reports, and friction measurements.

Operators and pilots must use the most adverse reliable braking action report or the most adverse expected conditions for the runway, or portion of the runway, that will be used for landing when assessing the required landing distance prior to landing. Operators and pilots must consider the following factors in assessing the actual landing distance: the age of the report, meteorological conditions present since the report was issued, type of airplane or device used to obtain the report, whether the runway surface was treated since the report, and the methods used for that treatment. Operators and pilots are expected to use sound judgment in determining the applicability of this information to their airplane's landing performance.

The following table provides an example of a correlation between braking action reports and runway surface conditions:

RELATIONSHIP BETWEEN BRAKING ACTION REPORTS AND RUNWAY SURFACE CONDITION (CONTAMINANT TYPE)

Braking Action	Dry (not reported)	Good	Fair/Medium	Poor	Nil
Contaminant	Dry	Wet, Dry Snow (< 20 mm).	Packed or Compacted Snow.	Wet Snow, Slush Standing Water, Ice.	Wet ice.

Relationship between braking action reports and runway surface condition (contaminant type)

Note: Under extremely cold temperatures, these relationships may be less reliable and braking capabilities may be better than represented. This table does not include any information pertaining to a runway that has been chemically treated or where a runway friction enhancing substance has been applied.

Some advisory landing distance information uses a standard air distance of 1000 feet from 50 feet above the runway threshold to the touchdown point. A 1000 foot air distance is not consistently achievable in normal operations. Operators are expected to apply adjustments to this air distance to reflect their specific operations, operational practices and experience.

To ensure that an acceptable landing distance safety margin exists at the time of arrival, the FAA, through Operation/Management Specifications paragraph C082, for turbojet operations, will specify that at least at fifteen percent safety margin be provided. This safety margin represents the minimum distance margin that must exist between the expected actual landing distance at the time of arrival and the landing distance available, considering the meteorological and runway surface conditions, airplane configuration and weight, and the intended use of airplane ground deceleration devices. In other words, the landing distance available of the runway to be used for landing must allow a full stop landing, in the actual conditions and airplane configuration at the time of landing, and at least an additional fifteen percent safety margin.

New Requirements

The FAA will soon be issuing mandatory OpSpec/MSpec C082, ''Landing Performance Assessments After Dispatch'' for all turbojet operators. This OpSpec/MSpec will allow operations based on provisions as set forth in this notice. If not currently in compliance, all turbojet operators shall be brought into compliance with this notice and the requirements of OpSpec/MSpec C082 no later than October 1, 2006. The FAA anticipates that operators will be required to submit their proposed procedures for compliance with this notice and OpSpec/MSpec to their POI no later than September 1, 2006. When the operator demonstrates the ability to comply with the C082 authorization for landing distance assessments, and has complied with the training, and training program requirements below, OpSpec/MSpec C082 should be issued. OpSpec/MSpec C082 will be available from the FAA by June 30, 2006.

The FAA anticipates that operator compliance with OpSpec/MSpec C082 could be accomplished by a variety of methods and procedurally should be accomplished by the method that best suits the operator's current procedures. Under OpSpec/MSpec C082, the operator's procedures would need to be approved by the Principal Operations Inspector and, if an operations manual is required for the operator, the procedures would need to be clearly articulated in the operations manual system for effected personnel. The following list of methods is not all inclusive, or an endorsement of any particular methods, but provided as only some examples of methods of compliance.

- Establishment of a minimum runway length required under the worst case meteorological and runway conditions for operator's total fleet or fleet type that will provide runway lengths that comply with this notice and OpSpec/MSpec C082.
- The requirements of this paragraph could be considered along with the other applicable preflight landing distance calculation requirements and the takeoff weight adjusted to provide for compliance at time of arrival under the conditions and configurations factored in the calculation. This information could be provided to the

flightcrew as part of the release/dispatch documents.

- Tab or graphical data accounting for the applicable variables provided to the flightcrew and/or dispatcher as appropriate to the operator's procedures.
- Electronic Flight Bag equipment that has methods for accounting for the appropriate variables.

Note: These are only some examples of methods of compliance. There are many others that would be acceptable as determined through coordination between the operator and the POI.

Requirements

No later than September 1, 2006, turbojet operators will be required to have procedures in place to ensure that a full stop landing, with at least a 15% safety margin beyond the actual landing distance, can be made on the runway to be used, in the conditions existing at the time of arrival, and with the deceleration means and airplane configuration that will be used. This assessment must take into account the meteorological conditions affecting landing performance (airport pressure altitude, wind velocity, wind direction, etc.), surface condition of the runway to be used for landing, the approach speed, airplane weight and configuration, and planned use of airplane ground deceleration devices. Turbojet operators will be required to ensure that flightcrews comply with the operator's approved procedures. In other words, absent an emergency, after the flightcrew makes this assessment using the air carrier's FAA-approved procedures, if at least the 15% safety margin is not available, the pilot may not land the aircraft.

This assessment does not mean that a specific calculation would be made before every landing. In many cases, the before takeoff criteria, with their large safety margins, will be adequate to ensure that there is sufficient landing distance with at least a 15% safety margin at the time of arrival. Only when the conditions at the destination airport deteriorate while en route (e.g., runway surface condition, runway to be used, winds, airplane landing weight/configuration/speed/deceleration devices) or the takeoff is conducted under sections 121.195(e) or 135.385(e) would a calculation or other method of determining the actual landing distance capability normally be needed. The operator will need to develop procedures to determine when such a calculation or other method of determining the expected actual landing distance is necessary to ensure that at least a 15% safety margin will exist at the time of arrival.

Operators may require flight crews to perform this assessment, or may establish other procedures to conduct this assessment. Whatever method(s) the operator develops, their procedures must account for all factors upon which the preflight planning was based and the actual conditions existing at time of arrival.

The FAA expects that turbojet operators will likely need to confirm that the procedures and data used to comply with paragraphs above for actual landing performance assessments yields results that are at least as conservative as the manufacturer's approved or advisory information for the associated conditions provided therein.

Turbojet operators will be required to have a safety margin of fifteen percent added to the actual (unfactored) landing distance and the resulting distance must be within the landing distance available of the runway used for landing. Note that the FAA considers a 15% margin to be the minimum acceptable safety margin.

If contaminated runway landing distance data are unavailable from the manufacturer (or STC holder if there is an STC that affects landing performance), the following factors should be applied to the pre-flight planning (factored) dry runway landing distances determined in accordance with the applicable operating rule (e.g., sections 91.1037, 121.195(b) or 135.385(b):

Runway condition	Reported braking action	Factor to apply to (factored) dry runway landing distance*
Dry	None	0.8.
Wet Runway, Dry Snow	Good	0.9.
Packed or Compacted Snow	Fair/Medium	1.2.
Wet snow, slush, standing water, ice	Poor	1.6.
Wet ice	Nil	Landing prohibited.

* If unfactored dry runway landing distances are used, multiply these factors by 1.667.

Note: These factors assume that maximum manual braking, autospoilers (if so equipped), and reverse thrust will be used. For operations without reverse thrust (or without credit for the use of reverse thrust) multiply these factors by 1.2.

The FAA anticipates that turbojet operators will be required to accomplish the landing distance assessment as close to the time of arrival as practicable, taking into account workload considerations during critical phases of flight, using the most up-to-date information available at that time. The most adverse braking condition, based on reliable braking reports, runway contaminant reports (or expected runway conditions if no reports are available) for the portion of the runway that will be used for the landing must be used in the actual landing performance assessment. For example, if the runway condition is reported as fair to poor, or fair in the middle, but poor at the ends, the runway condition must be assumed to be poor for the assessment of the actual landing distance. (This example assumes the entire runway will be used for the landing). If conditions change between the time that the assessment is made and the time of landing, the flightcrew must consider whether it would be safer to continue the landing or reassess the landing distance.

The operator's flightcrew and dispatcher training programs will need to include elements that provide knowledge in all aspects and assumptions used in landing distance performance determinations. This training must emphasize the airplane ground deceleration devices, settings, and piloting methods (e.g., air distance) used in determining landing distances for each make, model, and series of airplane. Elements such as braking action reports, airplane configuration, optimal stopping performance techniques, stopping margin, and the effects of excess speed, delays in activating deceleration devices, and other pilot performance techniques must be covered. All dispatchers and flightcrew members must be trained on these elements prior to being issued OpSpec/MSpec C082.

Under OpSpec/MSpec C082, it is likely that turbojet operators will also need to have procedures for obtaining optimal stopping performance on contaminated runways included in flight training programs. All flight crewmembers must be made aware of these procedures for the make/model/series of airplane they operate prior to being issued OpSpec/MSpec C082. In addition, if not already included, these procedures shall be incorporated into each airplane or simulator training curriculum for initial qualification on the make/model/series airplane, or differences training as appropriate. All flight crewmembers must have hands-on training and validate proficiency in these procedures during their next flight training event, unless previously demonstrated with their current employer in that make/model/series of airplane.

Issued in Washington, DC, on June 1, 2006.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 06–5196 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Fiscal Year 2006 Program for Systematic Review of Commission Regulations; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of systematic review of current regulations.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) announces its fiscal year 2006 program for systematic review of its current substantive regulations to ensure, to the maximum practical extent, consistency among them and with respect to accomplishing program goals. In fiscal year 2006, the following three regulations will be evaluated: Safety standard for matchbooks, 16 CFR part 1202; toy rattles, 16 CFR part 1500.18(a)(1); and baby bouncers, walker-jumpers, and baby walkers, 16 CFR part 1500.18(a)(6).

The primary purpose of the review is to assess the degree to which the regulations under review remain consistent with the Commission's program policies. In addition, each regulation will be examined with respect to the extent that it is current and relevant to CPSC program goals. Attention will also be given to whether the regulations can be streamlined, if possible, to minimize regulatory burdens, especially on small entities. To the degree consistent with other Commission priorities and subject to the availability of personnel and fiscal resources, specific regulatory or other projects may be undertaken in response to the results of the review.

The Commission solicits written comments from interested persons concerning the designated regulations' currentness and consistency with Commission policies and goals, and suggestions for streamlining where appropriate. In so doing, commenters are requested to specifically address how their suggestions for change could be accomplished within the statutory frameworks for Commission action under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084, and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278.

DATE: Comments and submissions in response to this notice must be received by August 7, 2006.

ADDRESSES: Comments and other submissions should be captioned ''Fiscal Year 2006 Regulatory Review Project'' and be submitted by e-mail to *cpsc-os@cpsc.gov* or by facsimile to (301) 504–0127. Comments may also be submitted by mail or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Linda Edwards, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7535; e-mail *eedwards@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. The Review Program

The President's Office of Management and Budget has designed the Program Assessment Rating Tool (PART) to provide a consistent approach to rating programs across the Federal government. A description of the PART process and associated program evaluation materials is available online at: *http://www.whitehouse.gov/omb/budintegration/part_assessing2004.html.*

Based on an evaluation of the Commission's regulatory programs using the PART, the recommendation was made that CPSC develop a plan to systematically review its current regulations to ensure consistency among them in accomplishing program goals. In FY 2004, the Commission conducted a pilot review program as the initial step in implementing that recommendation. The notice announcing the pilot program appeared in the **Federal Register** on January 28, 2004. 69 FR 4095. Based on the success of the pilot program, the Commission announced the continuation of the program for subsequent fiscal years.

B. The Regulations Undergoing Review

A summary of each of the regulations being reviewed in fiscal year 2006 is provided below. The full text of the regulations may be accessed at: *http://www.access.gpo.gov/nara/cfr/waisidx_03/16cfrv2_03.html.*

1. Safety Standard for Matchbooks

The safety standard for matchbooks appears at 16 CFR part 1202. The standard prescribes the safety requirements, including labeling requirements, for matchbooks. It applies to all matchbooks manufactured in or imported into the United States and is intended to address certain burn and eye injuries.

2. Toy Rattles

The standard for toy rattles appears at 16 CFR part 1500.18(a)(1). It applies to toy rattles containing, either internally or externally, rigid wires, sharp protrusions, or loose small objects that have the potential for causing lacerations, puncture wound injury, aspiration, ingestion, or other injury. Such toy rattles are included as banned toys and other banned articles intended for use by children.

3. Baby Bouncers, Walker-Jumpers, or Baby Walkers

The standard for baby bouncers, walker-jumpers, and baby-walkers appears at 16 CFR part 1500.18(a)(6). The standard applies to any article known as a ''baby bouncer,'' walker-jumper,'' or ''baby walker,'' and any other similar article which is intended to support very young children while sitting, walking, bouncing, jumping, and/or reclining, and which because of its design has any exposed parts capable of causing amputation, crushing, lacerations, fractures, hematomas, bruises, or other injuries to fingers, toes, or other parts of the anatomy of young children. Such articles are included as banned toys and other banned articles intended for use by children.

C. Solicitation of Comments and Information

The Commission invites interested persons to submit comments on each of the regulations being reviewed in the fiscal year 2006 program. In particular, commenters are asked to address:

1. Whether the regulation is consistent with CPSC program goals.

2. Whether the regulation is consistent with other CPSC regulations.

3. Whether the regulation is current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards.

4. Whether the regulation can be streamlined to minimize regulatory burdens, particularly any such burdens on small entities.

For each regulation being reviewed, please provide any specific recommendations for change(s), if viewed as necessary, a justification for the recommended change(s), and, with respect to each suggested change, a statement of the way in which the change can be accomplished within the statutory framework of the CPSA, FHSA, FFA, or PPPA, as applicable.

Comments and other submissions should be captioned ''Fiscal Year 2006 Regulatory Review Project'' and e-mailed to *cpsc-os@cpsc.gov* or faxed to (301) 504–0127. Comments or other submissions may also be mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. All comments and other submissions must be received by August 7, 2006.

Dated: May 31, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–8763 Filed 6–6–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–005]

RIN 1625–AA09

Drawbridge Operation Regulations; Arkansas Waterway, AR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operational language concerning the Rob Roy Drawbridge across the Arkansas Waterway at Mile 67.4 at Pine Bluff, Arkansas, the Baring Cross Railroad Drawbridge across the Arkansas Waterway at Mile 119.6 at Little Rock, Arkansas, and the Van Buren Railroad Drawbridge across the Arkansas Waterway at Mile 300.8 at Van Buren, Arkansas, to reflect the actual procedures currently being followed. The Coast Guard is also proposing to remove the regulations governing the following three bridges because they are locked in the open-to-navigation position and are no longer considered to be drawbridges: Missouri Pacific Railroad Drawbridge (Benzal Railroad Drawbridge) across the Arkansas Waterway at Mile 7.6 at Benzal, Arkansas, the Rock Island Railroad Drawbridge across the Arkansas Waterway at Mile 118.2 at Little Rock, Arkansas, and the Junction Railroad Drawbridge across the Arkansas Waterway at Mile 118.7 at Little Rock, Arkansas. These revisions will make the regulations concerning the Arkansas River clearer, thus the mariners transiting the river will be able to transit the river with greater ease.

DATES: Comments and related material must reach the Coast Guard on or before August 7, 2006.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–005], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Arkansas Waterway is a part of the McClellan-Kerr Arkansas River Navigation System. The System rises in the vicinity of Catoosa, Oklahoma, and embraces improved natural waterways and a canal to empty into the Mississippi River in southeast Arkansas. The Arkansas Waterway Drawbridge Operation Regulations contained in § 117.123(a), state that the Cotton Belt Railroad (Rob Roy) Bridge, mile 67.4, requires the use of ship's horns and flashing lights on the bridge to communicate between mariners requesting openings and railroad dispatchers remotely operating the bridge. Although not stated in § 117.123(a), records indicate that the method of communication outlined in § 117.123(a) was to be used by mariners and the remote bridge operator as a back-up means of communications. The Coast Guard, however, has determined that the primary method of communications outlined in § 117.123(a) has not been used during the past 20 years. It is doubtful that the system of horns and flashing lights was ever used. Instead, mariners and remote bridge operators have communicated via VHF–FM radiotelephone for opening the Rob Roy Drawbridge. The Coast Guard also determined that editorial changes were needed to correct inaccuracies in the specific requirements for the Baring Cross Railroad Drawbridge and the Van Buren Railroad Drawbridge. Three bridges on the Arkansas Waterway: The Missouri Pacific Railroad Drawbridge (Benzal Railroad Drawbridge) at mile 7.6, the Rock Island Railroad Drawbridge at Mile 118.2, and the Junction Railroad Drawbridge at Mile 118.7, have all been removed from rail service. Meetings with the owners indicate that all three bridges have been permanently locked in the open-to-navigation position and that there are plans to convert them into fixed pedestrian bridges in the future. Therefore, they are considered fixed bridges and should not be included in the drawbridge regulations section of the CFR. Section (a) of § 117.139 references the § 117.123 cite for the

Missouri Pacific Railroad Drawbridge (Benzal Railroad Drawbridge), mile 7.6, so section (a) also requires removal from the regulations. Therefore, sections (b) and (c) of § 117.139 will need to be re-alphabetized.

Discussion of Proposed Rule

The proposed changes to § 117.123 and § 117.139 will correct inaccuracies as follows: (a) A complete rewrite of § 117.123(a) to show the proper operating procedures for the Rob Roy Bridge; (b) A deletion of two bridges (Rock Island Railroad Drawbridge and the Junction Railroad Drawbridge) from § 117.123(b) that are no longer drawbridges and a rewrite of this section to accurately reflect the remote operation of the remaining bridge, the Baring Cross Railroad Bridge; (c) Delete the Missouri Pacific Railroad Drawbridge (Benzal Railroad Drawbridge) from § 117.123(c) as it is no longer a drawbridge and make minor edits to § 117.123(c) for the Van Buren Railroad Drawbridge to make it consistent with the other drawbridges found in § 117.123; and (d) Remove § 117.139(a) in its entirety as it is no longer applicable because the subject bridge is no longer a drawbridge.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

The Coast Guard expects that these changes will have a minimal economic impact on commercial traffic operating on the Arkansas Waterway. The procedures are already in place at the three active drawbridges, the other three drawbridges have been locked in the open-to-navigation position, and the changes to the CFR documents the procedures.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is neutral to all business entities since it affects only how the vessel operators request bridge openings.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Replace the current § 117.123 in full with an amended § 117.123 as follows:

§ 117.123 Arkansas Waterway—Automated Railroad Bridges.

(a) Across the Arkansas Waterway, the draw of the Rob Roy Drawbridge, mile 67.4 at Pine Bluff, Arkansas, is maintained in the closed position and is remotely operated. Any vessel requiring an opening of the draw shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 12 in Omaha, Nebraska. The remote drawbridge operator will advise the vessel whether the bridge can be immediately opened and maintain constant contact with the vessel until the span has opened and the vessel passage has been completed. The bridge is equipped with a Photoelectric Boat Detection System to prevent the span from lowering if there is an obstruction under the span. If the drawbridge cannot be opened immediately, the remote drawbridge operator shall notify the calling vessel and provide an estimated time for opening.

(b) Across the Arkansas Waterway, the draw of the Baring Cross Railroad Drawbridge, mile 119.6 at Little Rock, Arkansas, is maintained in the closed position and is remotely operated. Use the following procedures to request an opening of this bridge when necessary for transit:

(1) *Normal Flow Procedures.* Any vessel which requires an opening of the draw of this bridge shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 13 in North Little Rock, Arkansas. The remote drawbridge operator will advise the vessel whether the requested span can be immediately opened and maintain constant contact with the vessel until the requested span has opened and the vessel passage has been completed. If the drawbridge cannot be opened immediately, the remote drawbridge operator will notify the calling vessel and provide an estimated time for a drawbridge opening.

(2) *High Velocity Flow Procedures.* The area from mile 118.2 to mile 125.4 is a regulated navigation area (RNA) as described in § 165.817. During periods of high velocity flow, which is defined as a flow rate of 70,000 cubic feet per second or greater at the Murray Lock and Dam, mile 125.4, downbound vessels which require that the draw of this bridge be opened for unimpeded passage shall contact the remote drawbridge operator on VHF–FM Channel 13 either before departing Murray Lock and Dam, or before departing the mooring cells at Mile 121.5 to ensure that the Baring Cross Railroad Drawbridge is opened. The remote drawbridge operator shall immediately respond to the vessel's call, ensure that the drawbridge is open for passage, and ensure that it remains in the open position until the downbound vessel has passed through. If it cannot be opened immediately for unimpeded passage in accordance with § 163.203, the remote drawbridge operator will immediately notify the downbound vessel and provide an estimated time for a drawbridge opening. Upbound vessels shall request openings in accordance with the normal flow procedures as set forth above. The remote drawbridge operator shall keep all approaching vessels informed of the position of the drawbridge span.

(c) Across the Arkansas Waterway, the draw of the Van Buren Railroad Drawbridge, mile 300.8 at Van Buren, Arkansas, is maintained in the open position except as follows:

(1) When a train approaches the bridge, amber lights attached to the bridge begin to flash and an audible signal on the bridge sounds. At the end of 10 minutes, the amber light continues to flash; however, the audible signal stops and the draw lowers and locks if the photoelectric boat detection system detects no obstruction under the span. If there is an obstruction, the draw opens to its full height until obstruction is cleared.

(2) After the train clears the bridge, the draw opens to its full height, the amber flashing light stops, and the mid channel lights change from red to green, indicating the navigation channel is open for the passage of vessels.

§ 117.139 [Amended]

3. In § 117.139(a) remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Dated: May 16, 2006.

Ronald W. Branch,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.

[FR Doc. E6–8847 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2003–0199; FRL–8180–8]

RIN 2060–AL98

Alternative Work Practice To Detect Leaks From Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA is announcing that the comment period on the proposed rule amendment for numerous EPA air pollution standards which require

specific work practices for equipment leak detection and repair (LDAR), published on April 6, 2006 (70 FR 17401) is being extended until July 5, 2006.

DATES: The comment period has been extended from June 5, 2006 to on or before July 5, 2006.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0199, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2003–0199.
- *Fax:* (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2003–0199.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2003–0199, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2003–0199, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0199. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2003–0199, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2003–0199, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. David Markwordt, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group, Research Triangle Park, NC 27711; telephone number (919) 541–0837; facsimile number (919) 541–0246; e-mail address *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the proposed rule amendment include, but are not limited to:

Category	NAICS *	Examples of regulated entities
Industry	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.

* North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR parts 60, 61, 63, and 65, including, but not limited to: part 60, subparts A, Kb, VV, XX, DDD, GGG, KKK, QQQ, and WWW; part 61, subparts F, L, V, BB, and FF; part 63, subparts G, H, I, R, S, U, Y, CC, DD, EE, GG, HH, OO, PP, QQ, SS, TT, UU, VV, YY, GGG, HHH, III, JJJ, MMM, OOO, VVV, FFFF, and GGGGG; and part 65, subparts A, F, and G. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI: Do not submit information which you claim to be CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information submitted on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this notice is also available on the WWW. Following the Administrator's signature, a copy of the

proposed rule will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Comment Period

We received a request to extend the public comment period to July 5, 2006. We agreed to this request, therefore the public comment period will now end on July 5, 2006, rather than June 5, 2006.

How Can I Get Copies of the Proposed Amendments and Other Related Information?

EPA has established the official public docket for the proposed rulemaking under docket ID No. EPA–HQ–OAR–2003–0199. Information on how to access the docket is presented above in the **ADDRESSES** section.

Dated: June 1, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E6–8813 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2006–0141; FRL–8180–7]

RIN 2040–AE86

National Pollutant Discharge Elimination System (NPDES) Water Transfers Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an amendment to its Clean Water Act (CWA) regulations to expressly exclude water transfers from regulation under the National Pollutant Discharge Elimination System (NPDES) permitting program. The proposed rule would define water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. This proposed rule focuses exclusively on water transfers and is not relevant to whether any other activity is subject to the CWA permitting requirement.

DATES: Comments must be received on or before July 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2006–0141 by one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. EPA prefers to receive comments submitted electronically.

(2) E-mail: *ow-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2006–0141.

(3) Mail: Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2006–0141.

(4) Hand Delivery: Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2006–0141. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2006–0141. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the Regulations index at *http://www.regulations.gov/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jeremy Arling, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2218, e-mail address: *arling.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to those involved in the transfer of waters of the United States. The following table provides a

list of standard industrial codes for operations covered under this revised rule.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	NAICS	Examples of potentially affected entities
Resource management parties (includes state departments of fish and wildlife, state departments of pesticide regulation, state environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of water resource programs; the administration and regulation of water pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
	237110 Water and Sewer Line and Related Structures Construction.	This category includes entities primarily engaged in the construction of water and sewer lines, mains, pumping stations, treatment plants and storage tanks.
	237990 Other Heavy and Civil Engineering Construction.	This category includes dam Construction and management, flood control structure construction, drainage canal and ditch construction, flood control project construction, and spillway, floodwater, construction
Public Water Supply	221310 Water Supply	This category includes entities engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be regulated. EPA welcomes comment identifying those other entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting Confidential Business Information.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

Water transfers occur routinely and in many different contexts across the United States. Typically, water transfers route water through tunnels, channels, and/or natural stream water features, and either pump or passively direct it for uses such as providing public water supply, irrigation, power generation, flood control, and environmental restoration. Water transfers can be relatively simple, moving a small quantity of water a short distance on the same stream, or very complex, transporting substantial quantities of water over long distances, across both state and basin boundaries. There are thousands of water transfers currently in place in the United States, including 16 major diversion projects in the western States alone. Examples include the Colorado-Big Thompson Project in Colorado and the Central Valley Project in California.

Water transfers are administered by various federal, State, and local agencies and other entities. The Bureau of

Reclamation administers significant transfers in western States to provide approximately 140,000 farmers with irrigation water. With the use of water transfers, the Army Corps of Engineers keeps thousands of acres of agricultural and urban land in southern Florida from flooding in former areas of Everglades wetlands. Many large cities in the west and the east would not have adequate sources of water for their citizens were it not for the continuous redirection of water from outside basins. For example, both the cities of New York and Los Angeles are dependent on water transfers from distant watersheds to meet their municipal demand. In short, numerous States, localities, and residents are dependent upon water transfers, and these transfers are an integral component of U.S. infrastructure.

Although there have been a few isolated instances where entities responsible for water transfers have been issued NPDES permits, EPA is aware of only one State that has a practice of issuing NPDES permits for water transfers.[1] Water transfers are not generally subject to section 402 of the Clean Water Act. However, the Act reserves the ability of States to regulate water transfers under State law and this proposed rulemaking does not affect this state prerogative. *See* CWA section 510.

The question of whether or not an NPDES permit is required for water transfers has arisen because activities that result in the movement of waters of the U.S., such as trans-basin transfers of water to serve municipal, agricultural, and commercial needs, can also move pollutants from one waterbody (donor water) to another (receiving water). The Supreme Court recently discussed this issue in *South Fla. Water Mgmt. Dist.* v. *Miccosukee Tribe of Indians,* 541 U.S. 95 (2004), leaving the matter unresolved. In this case, the Supreme Court vacated a decision by the 11th Circuit, which had held that a Clean Water Act permit was required for transferring water from one navigable water into another, a Water Conservation Area in the Florida Everglades. The Court remanded the case for further fact-finding as to whether the two waters in question were ''meaningfully distinct.'' If they were not, no permit would be required. The Court declined to address legal arguments made by the parties because the arguments had not been raised in the lower court proceedings. The Court noted that EPA had not spoken to these legal issues in an administrative document. 541 U.S. at 107.

On August 5, 2005, EPA issued a legal memorandum entitled ''Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers.'' (interpretive memorandum) The precise legal question addressed in the interpretive memorandum was whether the movement of pollutants from one water of the U.S. to another by a water transfer is the ''addition'' of a pollutant potentially subjecting the activity to the permitting requirement under section 402 of the Act. Based on the statute as a whole and consistent with the Agency's longstanding practice, the interpretive memorandum concluded that Congress intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA.

Today, EPA is proposing an amendment to its Clean Water Act (CWA) regulations to expressly exclude water transfers from regulation under section 402 of the CWA. The proposed rule would define water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. This proposed rule focuses exclusively on water transfers and is not relevant to whether any other activity is subject to the CWA permitting requirement.

This proposed rule is organized as follows. Section III discusses the rationale for this exclusion, based on the language, structure, and legislative history of the Clean Water Act; section IV describes the scope of this proposed rule; and section V describes ''designation authority'' as an additional element that the Agency chose not to propose but for which the Agency is interested in receiving public comment.

III. Rationale

As stated in EPA's August 5th interpretive memorandum (available at Docket No. EPA–HQ–OW–2006–0141), based on the CWA as a whole, the Agency concludes that Congress intended to leave the oversight of water transfers to authorities other than the NPDES program. This proposed rule is based on the legal analysis contained in the interpretive memorandum and explained below.

Statutory construction principles instruct that the Clean Water Act should be interpreted by analyzing the statute as a whole. *United States* v. *Boisdore's Heirs,* 49 U.S. 113, 122 (1850). The Supreme Court has long explained ''in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and its object and policy.'' *Id. See also, Gustafond* v. *Alloyd Co., Inc.,* 513 U.S. 561, 570 (1995), *Smith* v. *United States,* 508 U.S. 223, 233 (1993), *United States Nat'l Bank of Or.* v. *Independent Ins. Agents of Am., Inc.,* 508 U.S. 439, 455 (1993). In general, the ''whole statute'' interpretation analysis means that ''a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.'' Norman J. Singer, *Statutes and Statutory Construction* vol. 2A § 46:05, 154 (6th ed., West Group 2000). As the Second Circuit has explained with regard to the CWA:

> Although the canons of statutory interpretation provide a court with numerous avenues for supplementing and narrowing the possible meaning of ambiguous text, most helpful to our interpretation of the CWA in this case are two rules. First, when determining which reasonable meaning should prevail, the text should be placed in the context of the entire statutory structure [quoting *United States* v. *Dauray,* 215 F.3d 257, 262 (2d Cir. 2000)]. Second, 'absurd results are to be avoided and internal inconsistencies in the statute must be dealt with.' *United States* v. *Turkette,* 452 U.S. 576, 580 (1981).

Natural Res. Def. Council v. *Muszynski,* 268 F.3d 91, 98 (2d Cir. 2001). *See also,* Singer, vol. 3B § 77:4, at 256–258.

A holistic approach is needed here in particular because the heart of this matter is the balance Congress created between federal and State oversight of activities affecting the nation's waters. The purpose of the CWA is to protect water quality. Congress nonetheless recognized that programs already existed at the State and local levels for managing water quantity, and it recognized the delicate relationship between the CWA and State and local programs. Looking at the statute as a whole is necessary to ensure that the analysis here is consonant with Congress' overall policies and objectives in the management and regulation of the nation's water resources.

[1] For instance, courts required NPDES permits for water transfers associated with the expansion of a ski resort and the supply of drinking water. See *Dubois* v. *United States Dept. of Ag.,* 103 F.3d 1273 (1st Cir 1996) and *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *City of New York,* 273 F.3d 481 (2nd Cir 2001). Pennsylvania began issuing permits for water transfers in 1986, in response to a State court decision mandating the issuance of such permits. *DELAWARE Unlimited* v. *DER,* 508 A.2d 348 (Pa. Cmwlth, 1986).

The analysis below addresses in turn the statutory language and structure and the legislative history.

A. Statutory Language and Structure

The Clean Water Act prohibits the discharge of a pollutant by any person except in compliance with specified statutory sections, including section 402. CWA section 301(a). The term ''discharge of a pollutant'' is defined as ''any addition of any pollutant to navigable waters from any point source.'' CWA section 502(12). Where discharges of pollutants occur, they are generally regulated by a permit under the NPDES program. Discharges of pollutants other than dredged or fill material may be authorized by permits issued under section 402 by EPA or States with approved permitting programs. Discharges of dredged or fill material may be authorized by permits issued by the Army Corps of Engineers and authorized States under section 404, and that provision is not addressed or affected by this Agency interpretation.

While no one provision of the Act expressly addresses whether water transfers are subject to the NPDES program, the specific statutory provisions addressing the management of water resources—coupled with the overall statutory structure—support the conclusion that Congress did not intend for water transfers to be regulated under section 402. The Act establishes a variety of programs and regulatory initiatives in addition to the NPDES permitting program. It also recognizes that the States have primary responsibilities with respect to the ''development and use (including restoration, preservation, and enhancement) of land and water resources.'' CWA section 101(b).

Congress also made clear that the Clean Water Act is to be construed in a manner that does not unduly interfere with the ability of States to allocate water within their boundaries, stating:

> It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by [the Act]. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water sources.

CWA section 101(g). While section 101(g) does not prohibit EPA from taking actions under the CWA that it determines are needed to protect water quality,[2] it nonetheless establishes Congress' general direction against unnecessary Federal interference with State allocations of water rights.

Water transfers are an essential component of the nation's infrastructure for delivering water that users are entitled to receive under State law. Because subjecting water transfers to a federal permitting scheme could unnecessarily interfere with State decisions on allocations of water rights, this section provides additional support for the Agency's interpretation that, absent a clear Congressional intent to the contrary, it is reasonable to read the statute as not requiring NPDES permits for water transfers. *See United States* v. *Bass,* 404 U.S. 336, 349 (1971) (''unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.'') A second statutory provision, section 510(2), similarly provides:

> Except as expressly provided in this Act, nothing in this Act shall * * * be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

Like section 101(g), this provision supports the notion that Congress did not intend administration of the CWA to unduly interfere with water resource allocation.

Finally, one section of the Act—304(f)—expressly addresses water management activities. Mere mention of an activity in section 304(f) does not mean it is exclusively nonpoint source in nature. *See Miccosukee* at 106 (noting that section 304(f)(2)(F) does not explicitly exempt nonpoint sources if they also fall within the definition of point source). Nonetheless, section 304(f) is focused primarily on addressing pollution sources outside the scope of the NPDES program. *See* H.R. Rep. No. 92–911, at 109 (1972), *reprinted in* Legislative History of the Water Pollution Control Act Amendments of 1972, Vol. 1 at 796 (Comm. Print 1973) (''[t]his section * * * on * * * *nonpoint sources* is among the most important in the 1972 Amendments'') (emphasis added)). This section directed EPA to issue guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants,[3] as well as processes, procedures and methods to control pollution from, among other things, ''changes in the *movement, flow or circulation of any navigable waters* or ground waters, including changes caused by the construction of *dams, levees, channels, causeways, or flow diversion facilities.*'' CWA 304(f)(2)(F) (emphasis added).

While section 304(f) does not exclusively address nonpoint sources of pollution, it nonetheless ''concerns nonpoint sources'' (*Miccosukee,* 541 U.S. at 106) and reflects an understanding by Congress that water movement could result in pollution, and that such pollution would be managed by States under their nonpoint source program authorities, rather than the NPDES program. This proposed rule accords with the direction to EPA and other federal agencies in section 101(g) to work with State and local agencies to develop ''comprehensive solutions'' to water pollution problems ''in concert with programs for managing water resources.''

Thus, these sections of the Act together demonstrate that Congress was aware that there might be pollution associated with water management activities, but chose to defer to comprehensive solutions developed by State and local agencies for controlling such pollution. Because the NPDES program only focuses on water pollution from point source discharges, it is not the kind of comprehensive program that Congress believed was best suited to addressing pollution that may be associated with water transfers.

In contrast with these provisions of the statute which expressly address water management activities, the general prohibition and definition sections of the statute do not explicitly discuss water management. Section 301(a) of the Act proscribes ''the discharge of any pollutant by any person'' except in compliance with specified sections of the CWA, including section 402. ''Discharge of a pollutant'' is defined as ''any addition of any pollutant to navigable waters from any point source.'' CWA section 502(12). While the statute does not define ''addition,'' sections 101(g), 102(b), 304(f) and 510(2) provide a strong indication that the term

[2] *PUD No. 1 of Jefferson County.* v. *Wash. State Dep't. of Ecology,* 511 U.S. 700, 720 (1994) (''Sections 101(g) and 510(2) preserve the authority of each State to allocate water quantity as between users; they do not limit the scope of water pollution controls that may be imposed on users who have obtained, pursuant to state law, a water allocation.'').

[3] Sources not regulated under sections 402 or 404 are generically referred to as ''nonpoint sources.'' *See National Wildlife Fed'n* v. *Consumers Power Co.,* 862 F.2d 580, 582 (6th Cir. 1988) (''nonpoint source'' is shorthand for and ''includes all water quality problems not subject to section 402'') (quoting *National Wildlife Fed'n* v. *Gorsuch,* 693 F.2d 156,166) (D.C. Cir. 1982) (internal quotation marks omitted)).

''addition'' should be interpreted in accordance with those more specific sections of the statute. In light of Congress' clearly expressed policy not to unnecessarily interfere with water resource allocation and its inclusion of changes in the movement, flow or circulation of any water of the U.S. in a section of the Act addressing sources of pollutants that would not be subject to regulation under section 402, it is reasonable to interpret ''addition'' as not generally including the mere transfer of waters from one water of the U.S. to another.

The overall structure of the statute further supports this conclusion. In several important ways, water transfers are unlike the types of discharges that were the primary focus of Congressional attention in 1972. Discharges of pollutants covered by section 402 are subject to ''effluent'' limitations. Water transfers, however, are not like effluent from an industrial, commercial or municipal operation. Rather than discharge effluent, water transfers release one water of the U.S. into another.

The operators of water control facilities are generally not responsible for the presence of pollutants in the waters they transport. Rather, those pollutants often enter ''the waters of the United States'' through point and nonpoint sources located far from those facilities and beyond control of the project operators. Congress generally intended that pollutants be controlled at the source whenever possible. *See* S. Rep. No. 92–414, p. 77 (1972) (justifying the broad definition of navigable waters because it is ''essential that discharge of pollutants be controlled at the source'').[4] The pollutants in transferred waters are more sensibly addressed through water resource planning and land use regulations, which attack the problem at its source. *See, e.g.,* CWA section 102(b) (reservoir planning); CWA section 208(b)(2)(F) (land use planning to reduce agricultural nonpoint sources of pollution); CWA section 319 (nonpoint source management programs); and CWA section 401 (state certification of federally licensed projects). Congress acknowledged this when it directed Federal agencies to co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water sources.

The Agency, therefore, concludes that, taken as a whole, the statutory language and structure of the Clean Water Act indicate that Congress did not generally intend to subject water transfers to the NPDES program. Rather, Congress intended to leave oversight of water transfers to water resource management agencies and the States in cooperation with Federal authorities.

B. Legislative History

The legislative history of the Clean Water Act also supports this conclusion. First, the legislative history of section 101(g) reveals that ''[i]t is the purpose of this [provision] to insure that State [water] allocation systems are not subverted.'' 3 Congressional Research Serv., U.S. Library of Congress, Serial No. 95–14, A Legislative History of the Clean Water Act of 1977, at 532 (1978); *see PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology,* 511 U.S. 700, 721 (1994).

Notably, the legislative history of the Act discusses water flow management activities only in the context of the nonpoint source program. In discussing section 304(f), the House Committee Report specifically mentioned water flow management as an area where EPA would provide technical guidance to States for their nonpoint source programs, rather than an area to be regulated under section 402.

> This section and the information on such nonpoint sources is among the most important in the 1972 Amendments. * * * The Committee, therefore, expects the Administrator to be most diligent in gathering and distribution of the guidelines for the identification of nonpoint sources and the information on processes, procedures, and methods for control of pollution from such nonpoint sources as * * * *natural and manmade changes in the normal flow of surface and ground waters.*

H.R. Rep. No. 92–911, at 109 (1972) (emphasis added).

In the legislative history of section 208 of the Act, the House Committee report noted that in some States, water resource management agencies allocating stream flows are required to consider water quality impacts. The Report stated:

> [I]n some States water resource development agencies are responsible for allocation of stream flow and are required to give full consideration to the effects on water quality. To avoid duplication, the Committee believes that a State which has an approved program for the handling of permits under section 402, and which has a program for water resource allocation should continue to exercise the primary responsibility in both of these areas and thus provide a balanced management control system.

H.R. Rep. No. 92–911, at 96 (1972).

Thus, Congress recognized that the new section 402 permitting program was not the only viable approach for addressing water quality issues associated with State water resource management. The legislative history makes clear that Congress did not intend a wholesale transfer of responsibility for water quality away from water resource agencies to the NPDES authority. Rather, Congress encouraged States to obtain approval of authority to administer the NPDES program under section 402(b) so that the NPDES program could work in concert with water resource agencies' oversight of water management activities to ensure a ''balanced management control system.'' *Id.*

C. Conclusion

In sum, the language, structure, and legislative history of the statute all support the conclusion that Congress did not intend to subject water transfers to the NPDES program. Water transfers are an integral part of water resource management; they embody how States and resource agencies manage the nation's water resources and balance competing needs for water. Water transfers also physically implement State regimes for allocating water rights, many of which existed long before enactment of the Clean Water Act. Congress was aware of those regimes, and did not want to impair the ability of these agencies to carry them out. Finding the NPDES program generally inapplicable to water transfers is true to this intent and the structure of the Clean Water Act, and gives meaning to sections 101(g) and 304(f) of the Act.

IV. Scope of This Proposed Rule

This proposed rule would expressly exclude discharges from water transfers from requiring an NPDES permit. The rule would define a water transfer as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. Waters of the U.S. are defined for purposes of the NPDES program in the Code of Federal Regulations in § 122.2.

A water transfer occurs between two ''waters of the United States.'' Accordingly, the movement of water through a dam is not a water transfer because the dam merely conveys water from one location to another within the same waterbody. However, in both cases (water transfers between distinct water

[4] Recognition of a general intent to control pollutants at the source does not mean that dischargers are responsible only for pollutants that they generate; rather, point sources need only convey pollutants into navigable waters to be subject to the Act. *See Miccosukee* at 105. Municipal separate storm sewer systems, for example, are clearly subject to regulation under the Act. CWA section 402(p).

bodies and movement of waters within the same waterbody), an NPDES permit is not required because no ''addition'' of a pollutant has occurred.

Water transfer facilities should be able to be operated and maintained in a manner which ensures that they do not add pollutants to the water being transferred. If no pollutants are added, a permit would not be required. However, where these point sources do add pollutants to water passing through the structure into the downstream water, NPDES permits are required. *Consumers Power,* 862 F.2d at 588; *Gorsuch,* 693 F.2d at 165, n. 22. Nothing in this rulemaking affects EPA's longstanding approach to regulation of such discharges under section 402.

This proposed rule would not affect EPA's longstanding position that, if water is withdrawn from waters of the U.S. for an intervening industrial, municipal or commercial use, the reintroduction of the intake water and associated pollutants is an ''addition'' subject to NPDES permitting requirements. EPA has long imposed NPDES requirements on entities that withdraw process water or cooling water and then return some or all of the water through a point source. *See, e.g.,* 40 CFR 122.2 (definition of process wastewater); 40 CFR 125.80–125.89 (regulation of cooling towers); 40 CFR 122.45(g) (regulations governing intake pollutants for technology-based permitting); 40 CFR part 132, Appendix F, Procedure 5–D (containing regulations governing water quality-based permitting for intake pollutants in the Great Lakes). Moreover, a discharge from a waste treatment system, for example, to a water of the United States, would not constitute a water transfer (and would require an NPDES permit). *See* 40 CFR 122.2. These situations are distinguished from the water transfers that are the subject of this notice because if water is withdrawn from navigable waters for an intervening industrial, municipal or commercial use, the reintroduction of that intake water and associated pollutants physically introduces pollutants from the outside world into navigable waters and, therefore, is an ''addition'' subject to NPDES permitting requirements. The fact that some of the pollutants in the discharge may have been present in the source water does not remove the need for a permit, although, under some circumstances, permittees may receive ''credit'' in their effluent limitations for such pollutants. See, 40 CFR 122.45(g) (regulations governing intake pollutants for technology-based permitting); 40 CFR part 132, Appendix F, Procedure 5–D (containing regulations governing water quality-based permitting for intake pollutants in the Great Lakes).

Similarly, an NPDES permit is normally required if a facility withdraws water from a water of the U.S., removes preexisting pollutants to purify the water, and then discharges the removed pollutants (perhaps in concentrated form) back into the water of the U.S. while retaining the purified water for use in the facility. An example of this situation is drinking water treatment facilities, which withdraw water from streams, rivers, and lakes. The withdrawn water typically contains suspended solids, which must be removed to make the water potable. The removed solids are a waste material from the treatment process and, if discharged into waters of the U.S., are subject to NPDES permitting requirements, even though that waste material originated in the withdrawn water. *See, e.g., In re City of Phoenix, Arizona Squaw Peak & Deer Valley Water Treatment Plants,* 9 E.A.D. 515, 2000 WL 1664964 (EPA Envtl. App. Bd. November 1, 2000) (rejecting, on procedural grounds, challenges to NPDES permits for two drinking water treatment plants that draw raw water from the Arizona Canal, remove suspended solids to purify the water, and discharge the solids back into the Canal; *Final NPDES General Permits for Water Treatment Facility Discharges in the State of Massachusetts and New Hampshire,* 65 FR 69,000 (2000) (NPDES permits for discharges of process wastewaters from drinking water treatment plants).

Waters that are diverted and used for irrigation and then reintroduced to the waters of the U.S. are exempt from permitting requirements under the exemption for return flows from irrigated agriculture from the definition of ''point source'' in section 502(14) and this Agency interpretation does not affect that exemption.

The activities addressed by this proposed rule also stand in sharp contrast to other activities that have long been subject to the Clean Water Act's permitting requirements. For example, section 402 subjects placer mining of ore deposits in streams and rivers to the NPDES permitting program because the process results in the excavation and point source discharge of dirt and gravel into waters of the U.S. *See Rybachek* v. *EPA,* 904 F.2d 1276, 1285 (9th Cir. 1990). Similarly, section 404 of the Clean Water Act subjects the deposit or redeposit of dredged or fill material to a specialized permitting program because that activity results in the point source discharge of those materials into navigable waters. *See* CWA section 404; *United States* v. *Deaton,* 209 F.3d 331, 335–336 (4th Cir. 2000); *United States* v. *M.C.C. of Fla., Inc.,* 772 F.2d 1501, 1503–1506 (11th Cir. 1985), vacated on other grounds, 481 U.S. 1034 (1987), readopted in relevant part, 848 F.2d 1133 (11th Cir. 1988); *Avoyelles Sportsmen's League, Inc.* v. *Marsh,* 715 F.2d 897, 923–925 (5th Cir. 1983). The Clean Water Act also clearly imposes permitting requirements on publicly owned treatment works, and large and medium municipal separate storm sewer systems. *See* CWA sections 402(a), 402(p)(1)–(4). Congress amended the Clean Water Act in 1987 specifically to add new section 402(p) to better regulate stormwater discharges from point sources. Water Quality Act of 1987, Public Law 100–4, 101 Stat. 7 (1987). Again, this interpretation does not affect EPA's longstanding regulation of such discharges.

This proposed rule also would not change EPA's longstanding position, upheld by the Supreme Court in *Miccosukee,* that the definition of ''discharge of a pollutant'' in the CWA includes coverage of point sources that do not themselves generate pollutants. The Supreme Court stated, ''A point source is, by definition, a 'discernible, confined, and discrete *conveyance*' Section 1362(14) (emphasis added). That definition makes plain that a point source need not be the original source of the pollutant; it need only convey the pollutant to 'navigable waters,' which are, in turn, defined as 'the waters of the United States.' Section 1362(7).'' *Miccosukee,* 541 U.S. at 105.

EPA solicits comment on the proposed definition of a water transfer. Does the definition properly achieve the Agency's objective of excluding water transfers from NPDES permitting (as intended by Congress) while affirming section 402 jurisdiction over all other currently regulated activities? Does the proposed rule clearly distinguish between situations where the water transfer facility ''adds'' pollutants to the water being transferred and thus must obtain a permit, and those situations where waters merely pass through the facility without the addition of any pollutant?

V. Designation Authority

EPA considered, but ultimately did not propose, an additional provision allowing States to designate particular water transfers as subject to the NPDES program on a case-by-case basis. EPA did not select this option but is seeking comment on it.

Under this approach, the permitting authority would have the discretion to

issue a permit on a case-by-case basis if a transfer would cause a significant impairment of a designated use and no State authorities are being implemented to adequately address the problem. A significant impairment would occur when, as a result of the water transfer, the designated use of the receiving water could no longer be maintained. This designation would be at the sole discretion of the State NPDES authority, and would only apply in States authorized to implement the section 402 program.

Again, the Agency is not proposing to establish designation authority, but EPA is interested in the programs States have to address water quality impacts from water transfers, how they are being implemented, and what is the best way to fill any gaps in how States address those impacts currently. EPA notes that, regardless of whether it includes this designation authority in the final rule or not, States retain the authority under State law to regulate water transfers as they see fit, including requiring permits for such transfers. Without designation authority, however, these permits could not be issued under NPDES program authority.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed rulemaking would expressly exclude discharges from water transfers from requiring an NPDES permit. This rule does not seek to require potentially affected entities to generate, maintain, retain, or disclose information to or for a Federal agency and therefore would not impose any information collection burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant adverse economic impact on a substantial number of small entities. Because EPA is simply codifying the Agency's longtime position that Congress did not generally intend for the NPDES program to regulate the transfer of waters of the United States into another water of the United States, this proposed action will not impose any requirement on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is proposing to simply codify the Agency's longtime position that Congress did not generally intend for the NPDES program to regulate the transfer of a water of the United States into another water of the United States. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule does not change the relationship between the government and the States or change their roles and responsibilities. Rather, this proposed rulemaking would confirm the Agency's longstanding practice that Congress generally intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with representatives of State governments early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. EPA asked States for data regarding the number of water transfers within their jurisdiction and the mechanisms under State law that could be utilized to address any possibly adverse water quality impacts from those transfers. In considering the designation authority provision, EPA also sought data from the States regarding their use of similar authorities in their stormwater phase II and Concentrated Animal Feeding Operations (CAFO) rules. In addition to data collection, EPA sought States' opinions on water transfers generally, and designation, specifically. States varied in their concerns, with some opposed to NPDES permitting for water transfers and some supportive of an ability to use it.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposed rule would clarify that Congress did not generally intend for the NPDES program to regulate the transfer of waters of the United States into another water of the United States. Nothing in this rule would prevent an Indian Tribe from exercising its own organic authority to deal with such matters. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From EnvironmentalHealth and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866, and because the Agency does not have reason to believe that it addresses environmental health and safety risks that present a disproportionate risk to children. Today's proposed rule would simply clarify Congress's intent that water transfers generally be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule would not be subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 1, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 122 is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.3 is amended by adding paragraph (i) to read as follows:

§ 122.3 Exclusions.

* * * * *

(i) *Discharges from a water transfer.* Water transfer means an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants added by the water transfer activity itself to the water being transferred.

[FR Doc. E6–8814 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0493; FRL–8072–4]

Inert Ingredient; Revocation of a Tolerance Exemption with Insufficient Data for Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to revoke the existing exemption from the requirement of a tolerance for residues of one inert ingredient because there are insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The inert ingredient tolerance exemption under 40 CFR 180.920 is ''α-Alkyl (C_{10}-C_{16})-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3–20 moles.'' The revocation action in this document contributes towards the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory action in this document pertains to the revocation of one tolerance exemption which is counted as tolerance reassessment toward the August 2006 review deadline.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0493, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0493. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If

you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background and Statutory Findings

A. What Action is the Agency Taking?

On May 3, 2006, EPA published a proposed rule in the **Federal Register** (71 FR 25993; FRL–8060–9) to revoke exemptions from the requirement of a tolerance for certain inert ingredients used in pesticide products. Unfortunately, one inert ingredient tolerance exemption was inadvertently omitted from this **Federal Register** proposed rule: ''α-Alkyl (C_{10}–C_{16})-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3–20 moles.'' Therefore, in this proposed rule, EPA is proposing to revoke this one inert ingredient tolerance exemption because sufficient data are not available to the Agency to make the safety determination required by FFDCA section 408(c)(2).

As described in the **Federal Register** of May 3, 2006, described in this unit, EPA is now in the process of reassessing all inert ingredient exemptions from the requirement of a tolerance (''tolerance exemptions'') established prior to August 2, 1996, as required by FFDCA section 408(q). Under FFDCA section 408(q), tolerance reassessment may lead to regulatory action under FFDCA section 408(e)(1). When taking action under FFDCA section 408(e)(1), EPA may leave a tolerance exemption in effect only if the Agency determines that the tolerance exemption is safe. As is the case for the inert ingredient tolerance exemptions identified in the May 3 **Federal Register**, EPA has insufficient data available to make the safety determination required by FFDCA section 408(c)(2) for this one inert ingredient and is proposing to revoke the tolerance exemption.

In making the FFDCA reassessment safety determination, EPA considers the validity, completeness, and reliability of the data that are available to the Agency, FFDCA section 408 (b)(2)(D), and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure), FFDCA section 408 (b)(2)(C). Data gaps exist for this inert ingredient in areas critical to reassessment. Without these data, the assessment of possible effects to infants and children cannot be made. Thus, EPA has insufficient data to make the safety finding of FFDCA section 408(c)(2) and is revoking the inert ingredient tolerance exemption identified in this document.

In developing risk assessment documents for inert ingredient tolerance exemptions, EPA currently reviews data submitted to the Agency as well as information from reputable, publicly available sources. For example, studies may be available in professional (peer-reviewed) journals, and chemical assessments may be available on the Internet from U.S. Government agencies (e.g., EPA, the Agency for Toxic Substances and Disease Registry, National Institutes of Health, Food and Drug Administration (FDA)) and international organizations (e.g., World Health Organization, Organization for Economic Cooperation and Development (OECD)). In some cases, representatives from chemical and pesticide manufacturing industry associations endeavored to locate data to support reassessment of surfactant chemicals. Nonetheless, sufficient valid and reliable data were not available to make the requisite FFDCA safety finding.

EPA could not have made the requisite FFDCA safety finding unless, at the very least, a set of basic toxicity studies had been available to the Agency. It is possible that the tests agreed to under OECD's Screening Information Data Set (SIDS) program would have sufficed. Especially important to inert ingredient reassessment is an acceptable repeat-dose study. The preferred test for repeat-dose toxicity is the ''Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test'' (OECD Test Guideline 422). More information about the OECD SIDS and EPA's High Production Volume (HPV) programs is found at *http://www.epa.gov/oppt/chemrtk/sidsappb.htm*. For the inert ingredient subject to this proposed rule and the inert ingredients identified in the May 3 **Federal Register**, the full OECD SIDS may not have been necessary in some cases because EPA has available a limited number of studies and information on the inert ingredient in question (e.g., acute toxicity studies). In other cases, the limited toxicity information available to the Agency may

indicate a need for further testing. EPA always recommends that parties interested in supporting an inert ingredient consult with the Agency prior to embarking on a testing strategy in order to determine existing data gaps and if testing certain chemicals within a multi-chemical exemption would serve to represent the entire exemption.

In summary, the safety finding required by FFDCA section 408(b)(2) cannot be made for the one inert ingredient tolerance exemption due to insufficient data. Therefore, EPA is revoking under FFDCA section 408(e)(1) the tolerance exemption identified at the end of this document under 40 CFR 180.920 with the revocation effective 2 years after the date of publication of the final rule in the **Federal Register**.

The inert ingredient tolerance exemption that is the subject of this revocation proposal is found in 40 CFR 180.920 and reads as follows: ''α-Alkyl (C_{10}–C_{16})-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3–20 moles.'' It is noted that the chemical described in this tolerance exemption is included in a broader tolerance exemption also found in 40 CFR 180.920 that was proposed for revocation for insufficient data in the May 3 **Federal Register**, which reads as follows: ''α-Alkyl (C_{10}–C_{16})-ω-hydroxypoly (oxyethylene)poly (oxypropylene) mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the combined poly(oxyethylene) poly(oxypropylene) content averages 3–20 moles.'' The public has had an opportunity to comment on the proposed revocation of the broader tolerance exemption since May 3. Because the public has had an opportunity since May 3 to comment on the broader exemption that encompasses this more narrow tolerance exemption, a 30–day comment period is provided for this proposed revocation of the more narrow tolerance exemption.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do These Actions Become Effective?

EPA is revoking the tolerance exemption identified in this proposed rule that has insufficient data effective 2 years after the date of publication of the final rule in the **Federal Register**. Any commodities listed in this rule treated with pesticide products containing the inert ingredient and in the channels of trade following the tolerance revocation shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of this pesticide chemical in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document revokes one inert ingredient tolerance exemption, which counts as a tolerance reassessment toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Actions Consistent with International Obligations?

The tolerance revocation in this rule is not discriminatory and is designed to ensure that both domestically produced and imported foods meet the food safety standard established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision (RED) documents. EPA has developed guidance concerning submissions for import tolerance support which was published in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the Internet at *http://www.epa.gov*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44

U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide chemical listed in this rule, the Agency hereby certifies that this action will not have a significant negative economic impact on a substantial number of small entities. Specifically, the Agency has concluded in a memorandum dated May 25, 2001 that for import tolerance revocation there is a negligible joint probability of certain defined conditions holding simultaneously which would indicate an RFA/Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) concern and require more analysis. (This Agency document is available in the docket of this rule). Furthermore, for the pesticide chemical named in this rule, the Agency knows of no extraordinary circumstances that exist as to the present rule that would change the EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.920, the table is amended by revising the entry in the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

Inert Ingredients	Limits	Uses
* * *	*	*
α-Alkyl (C_{10}–C_{16})-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3–20 moles	Expires June 9, 2008	Surfactant; related adjuvants of surfactants
* * *	*	*

[FR Doc. E6–8826 Filed 6–6–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0036; FRL–8062–7]

p-Chlorophenoxyacetic acid, Glyphosate, Difenzoquat, and Hexazinone; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the plant growth regulator p-chlorophenoxyacetic acid and the herbicide hexazinone. Also, EPA is proposing to modify certain tolerances for the plant growth regulator p-chlorophenoxyacetic acid and the herbicides glyphosate, difenzoquat, and hexazinone. In addition, EPA is proposing to establish new tolerances for the herbicides difenzoquat and hexazinone. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. No tolerance reassessments will be counted at the time of a final rule because tolerances in existence on August 2, 1996 that are associated with actions proposed herein were previously counted as reassessed at the time of the completed Reregistration Eligibility Decision (RED), Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED), or **Federal Register** action.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0036. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed

rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of the plant growth regulator p-chlorophenoxyacetic acid and the herbicides glyphosate, difenzoquat, and hexazinone in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each RED and report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–00–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet for glyphosate at *http://www.epa.gov/pesticides/reregistration/status.htm*, and p-chlorophenoxyacetic acid, difenzoquat, and hexazinone in public dockets EPA–HQ–OPP–2003–0124, EPA–HQ–OPP–2002–0097, and EPA–HQ–OPP–2002–0188, respectively, at *http://www.regulations.gov*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that (1) lawful use (sometimes through a label change) may result in a higher residue level on the commodity, and (2) the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies for difenzoquat and hexazinone can be found under their respective public docket numbers, identified above. Paper copies for p-chlorophenoxyacetic acid and glyphosate are available in the public docket for this rule. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov/*. You may search for this rule under docket number EPA–HQ–OPP–2006–0036, or for an individual chemical under its respective docket number, then click on that docket number to view its contents.

The aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be established or modified, are safe, i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *p-Chlorophenoxyacetic acid*. The Agency canceled the last registered uses for p-chlorophenoxyacetic acid on tomato in May 1995. Therefore, the Agency is proposing to revoke the tolerance in 40 CFR 180.202(a)(1) for combined residues of the plant regulator p-chlorophenoxyacetic acid and its metabolite p-chlorophenol in or on tomato, remove paragraph (a)(1), and recodify existing paragraph (a)(2) as paragraph (a).

Based on the available data that indicate combined residues of p-chlorophenoxyacetic acid and its metabolite p-chlorophenol in or on mung bean sprouts will not exceed 0.2 ppm, the Agency determined that the tolerance should be lowered to 0.2 ppm. Therefore, EPA is proposing to decrease the tolerance for combined residues of the plant regulator p-chlorophenoxyacetic acid and its metabolite p-chlorophenol to inhibit embryonic root development in or on bean, mung, sprouts from 2.0 to 0.2 ppm in newly recodified 40 CFR 180.202(a).

2. *Glyphosate*. A RED was completed on glyphosate in September 1993 before the passage of the FQPA. On April 11, 1997 (62 FR 17723) (FRL–5598–6) EPA published a notice in the **Federal Register** which established new uses for glyphosate. Existing tolerances for glyphosate in 40 CFR 180.364 were

considered by the Agency to be reassessed at that time. Although the glyphosate RED recommended revocation of tolerances based on no registered uses for the following food commodities; bread fruit, canistel, cherimoya, cacao bean, date, marmaladebox (formerly genip), jaboticaba, jackfruit, persimmon, sapote (black and white), soursop, and tamarind at 0.2 ppm and coconut at 0.1 ppm; these food uses are currently active and have existed for years since the RED. Canistel, cacao bean, jackfruit, and sapote have existed since 2003; bread fruit, cherimoya, marmaladebox, jaboticaba, soursop, and tamarind since 2000, and persimmon and dates since 1998. Therefore, EPA will maintain these tolerances in 40 CFR 180.364.

Data on glyphosate residues in or on both tea leaves and instant tea were available at the time of the RED. Nevertheless, instant tea was also recommended for revocation in the RED because the Agency at that time did not consider it to be a significant item in the daily dietary risk assessment of the population of the United States from pesticide use on that processed commodity. However, instant tea is now considered to be a processed commodity according to the ''Table 1.—Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at *http://www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/*. As stated above, existing tolerances for glyphosate in 40 CFR 180.364, including instant tea, were reassessed at the time of new use approvals on (April 11, 1997, 62 FR 17723). Therefore, EPA will maintain the tolerance on ''tea, instant'' in 40 CFR 180.364.

In the RED, it was recommended that tolerances be established for potato chips, granules, flakes and processed potato waste; however, the quality of the data for potato chips, granules and processed potato waste was in question. In 1996 new residue data on potatoes and processed potato foods and feeds were provided to the Agency. These data indicated that at the 10x rate residues were <0.01 ppm glyphosate in or on fresh potato chips, dry peel, and wet peel; and 0.02 - 0.049 ppm glyphosate on fresh flakes. Based on these data the Agency has determined that the established tolerance of 0.2 ppm for ''vegetable, root and tuber, group 1, except sugar beet'' is sufficient to cover all measured and anticipated residues of glyphosate in raw tubers and in potato peels, chips, flakes or granules. Therefore, tolerances for potato chips, granules, flakes and processed potato waste are no longer needed.

In an effort to achieve compatibility with Codex Maximum Residue Levels (MRLs), EPA is proposing to decrease the tolerance in 40 CFR 180.364 (a) for residues of glyphosate -(phosphonomethyl)glycine resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on kiwifruit from 0.2 ppm to 0.1 ppm.

In an effort to achieve compatibility with Codex MRLs, EPA is proposing to increase the tolerances in 40 CFR 180.364 (a) for residues of glyphosate -(phosphonomethyl)glycine resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on cattle, liver and hog, liver from 0.5 ppm to 1.0 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

EPA is proposing to revise commodity terminology in 40 CFR 180.364 to conform to current Agency practice as follows: Hop, dried cone to hop, dried cones; wheat, milling fractions, (except flour) to wheat, bran, wheat, middlings, and wheat, shorts; grain, cereal, stover and straw, group to grain, cereal, forage, fodder and straw, group 16; vegetable, bulb, group to vegetable, bulb, group 3; vegetable, foliage of legume except soybean, subgroup 7A to vegetable, foliage of legume, subgroup 7A, except soybean; vegetable, legume, group 6 except soybean to vegetable, legume, group 6, except soybean; vegetable, fruiting, group to vegetable, fruiting, group 8; vegetable, leafy, group to vegetable, leafy, group 4, and vegetable, leaves of root and tuber, group (except sugar beet tops) to vegetable, leaves of root and tuber, group 2, except sugar beet tops.

The tolerance reassessment in the RED proposed that alfalfa (fresh and hay), clover and other non-grass animal feeds be consolidated in the corresponding crop group ''animal feed, nongrass, group 18'' at 100 ppm. Since the RED was published, the ''animal feed, nongrass, group 18'' was established; however, due to changes in the use patterns and grazing intervals the corresponding tolerance level is 400 ppm. Also, the existing and conflicting tolerances for ''alfalfa, hay'' (400 ppm) and ''alfalfa, forage'' (175 ppm), respectively, should be removed since the existing tolerance on ''animal feed, nongrass, group 18'' (400 ppm) covers these animal feed items. This was originally proposed by the EPA June 18, 2003 (68 FR 36472) (FRL–7308–8). Therefore, EPA is proposing to remove the tolerances in 40 CFR 180.364 on alfalfa, forage at 175 ppm and alfalfa, hay at 400 ppm, because they are no longer needed and their commodity uses are covered by the existing group tolerance.

The RED recommended that a crop group tolerance for, ''grass forage, fodder and hay, group 17'' be established at 200 ppm. Since then, the tolerance ''grass forage, fodder and hay, group 17'' was established and increased to 300 ppm on September 27, 2002 due to changes in the use patterns and pre-grazing intervals (67 FR 60934, FRL–7200–2), and (65 FR 57957, FRL–6746–6).

Since the 1993 RED tolerance recommendations, multiple tolerance actions have occurred to affect those original recommendations. The tolerance levels and commodity names have changed due to commodity terminology updates, crop group composition changes, adjustments in use patterns or intervals of use, additional data submissions, and changes in the tolerance expression in 40 CFR 180.364 for glyphosate (60 FR 45062, FRL–4962–1), (61 FR 7729, FRL–5351–5), (61 FR 15192, FRL–5351–1), (62 FR 17723, FRL–5598–6), (63 FR 54058, FRL–6036–1), (64 FR 18360, FRL–6073–5), (64 FR 41818, FRL–6096–2), (64 FR 66108, FRL–6390–5), (65 FR 57957, FRL–6746–6), (67 FR 60934, FRL–7200–2), (68 FR 36472, FRL–7308–8), (68 FR 39460, FRL–7316–5, (69 FR 65081, FRL–7683–9), and (70 FR 7861, FRL–7697–7).

3. *Difenzoquat*. Based on available field trial data that indicate residues of difenzoquat in or on barley grain were non-detectable (<0.05 ppm), barley straw were as high as 4.0 ppm, and wheat straw were as high as 4.2 ppm, the Agency determined that these tolerances should be decreased to 0.05 ppm, 5.0 ppm, and 5.0 ppm, respectively. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.369 for residues of difenzoquat in or on barley, grain from 0.2 to 0.05 ppm; barley, straw from 20 to 5.0 ppm; and wheat, straw from 20 to 5.0 ppm.

Processing data for wheat grain and aspirated grain fractions indicate that residues of difenzoquat concentrated 4-fold in wheat bran and 4.6-fold in shorts, and minimal concentration

occurred in middlings. Residues did not concentrate in flour. The wheat processing data are also applicable to barley. Based on those concentration factors and the reassessed tolerance of 0.05 ppm for wheat grain, the Agency determined that tolerances for both wheat bran and shorts should be established at 0.25 ppm. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.369 at 0.25 ppm for residues of difenzoquat in or on wheat, bran and wheat, shorts. In addition, because the wheat processing data are translated to barley, EPA is proposing to establish a tolerance in 40 CFR 180.369 for residues of difenzoquat in or on barley, bran at 0.25 ppm.

4. *Hexazinone*. The TRED mentions the need for additional method validation of Method AMR 3783–6 for determining hexazinone (parent and metabolite) levels in milk and livestock tissues. The method has undergone successful independent validation and radiovalidation studies. Additional validation by EPA laboratories is not required. The method is considered adequate for enforcement purposes for residues of hexazinone (and metabolites) in milk and livestock tissues.

According to the TRED, the tolerance expression, which is currently expressed as hexazinone and its metabolites (calculated as hexazinone) in 40 CFR 180.396(a) for plant, animal, and milk commodities for general tolerances, and in plant commodities for regional tolerances in 40 CFR 180.396(c), should be modified to include all the specific metabolites in plants, animal tissue and milk. Consequently, EPA is proposing to separate and recodify plant, animal, and milk tolerances from 180.396(a) to (a)(1), (a)(2), and (a)(3), respectively. Therefore, EPA is proposing that the tolerance expressions in 40 CFR 180.396 read as follows:

(a)(1) *General*. Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], D [3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione] (calculated as hexazinone) in the following food commodities:

(a)(2) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its animal tissue metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione] and F [3-cyclohexyl-6-amino-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione (calculated as hexazinone) in the following food commodities:

(a)(3) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione] , C-1 [3-(2-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], C-2 [3-(3-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione] and F (calculated as hexazinone) in milk: and

(c) *Tolerances with regional registrations*. Tolerances with regional registration, as defined in §180.1(n) and which excludes use of hexazinone on sugarcane in Florida, are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], D [3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione] (calculated as hexazinone) in the following commodities.

Based on available ruminant feeding data at exaggerated pesticide dose levels and the maximum theoretical dietary burden, EPA determined that there is no reasonable expectation of finite hexazinone residues of concern in livestock from treated feed. At an exaggerated (62.5x) feeding level, residues of hexazinone and its metabolites were non-detectable; i.e., were below the combined limit of quantitation (LOQs) of 0.1 ppm in fat. Therefore, the Agency determined that tolerances for fat of cattle, goats, hogs, horses, and sheep are no longer needed under 40 CFR 180.6(a)(3). As a result, EPA is proposing to revoke the tolerances in 40 CFR 180.396 for combined hexazinone residues of concern in or on cattle, fat; goat, fat; hog, fat; horse, fat; and sheep, fat.

After correction of the exaggerated feeding dose (62.5x) for cattle, goats, horses, and sheep, the Agency determined that residue levels of hexazinone and its metabolites ranged as high as 0.09 ppm (just below the sum of the LOQs or 0.1 ppm), and therefore meat and meat byproduct tolerances should be maintained in newly recodified 40 CFR 180.396(a)(2) at 0.1 ppm for cattle, goats, horses, and sheep.

After correction of the exaggerated feeding dose (640x) for hogs, the Agency determined that residue levels of hexazinone and its metabolites were non-detectable; i.e., were below the combined LOQs of 0.1 ppm in tissue. Therefore, the tolerances on hog meat and meat byproducts are no longer needed under 40 CFR 180.6(a)(3). As a result of the available ruminant feeding data and the enforcement method, EPA is proposing to revoke the tolerances in 40 CFR 180.396 for combined hexazinone residues of concern in or on hog, meat and hog, meat byproducts.

In addition, after correction of the exaggerated feeding dose (62.5x) for cattle, the Agency determined that residue levels of hexazinone and its metabolites in whole milk ranged as high as 0.164 ppm. Based on the enforcement method, the sum of the combined LOQs for hexazinone and its metabolites, EPA is proposing to increase the tolerance in the newly recodified 40 CFR 180.396(a)(3) for the combined hexazinone residues of concern in or on milk from 0.1 to 0.2 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Available data indicate combined residues of hexazinone and its regulated metabolites were <0.3 ppm in or on blueberries and <0.35 ppm in or on pineapples. Based on the combined LOQs (0.55 ppm) of the enforcement method for parent plus metabolites, EPA is proposing to increase the tolerances in newly recodified 40 CFR 180.396(a)(1) for combined hexazinone residues of concern in or on blueberry from 0.2 to 0.6 ppm and pineapple (whole fruit) from 0.5 to 0.6 ppm, and revise pineapple (whole fruit) to pineapple. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Available data indicate combined residues of hexazinone and its regulated metabolites were <0.35 ppm in or on sugarcane. Based on the combined LOQs (0.55 ppm) of the enforcement method for parent plus metabolites, the Agency determined that the tolerance for sugarcane, cane should be increased to 0.6 ppm. Also, based on available sugarcane processing data, the Agency determined that residues of hexazinone and its metabolites concentrated 32-fold to final (blackstrap) molasses, the form of molasses typically fed to livestock. After adjusting for the 2.0x degree of exaggeration used in the processing study, the Agency determined that while the calculated residue was greater than the recommended tolerance for the

raw agricultural commodity (sugarcane, cane), it was below the current tolerance level for sugarcane molasses and should be decreased to 4.0 ppm. Therefore, EPA is proposing to increase the tolerance for sugarcane, cane and decrease the tolerance for sugarcane, molasses with regional registration in 40 CFR 180.396(c), as defined in 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, for combined hexazinone residues of concern in or on sugarcane, cane from 0.2 to 0.6 ppm and sugarcane molasses from 5.0 to 4.0 ppm, and revise sugarcane molasses to sugarcane, molasses. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the available residue data, the TRED recommended decreasing the tolerance in/on alfalfa hay contingent upon previously requested label revisions by the registrant related to the pre-harvest and pre-grazing intervals. The tolerance decrease is solely a reflection of changes in the use pattern; the decrease is not required for the tolerance to be safe. The Agency is in the process of following up with the registrant and will address the tolerance modification in a future **Federal Register** notice.

Based on available data that indicate combined residues of hexazinone and its regulated metabolites as high as 1.46 ppm in or on alfalfa seed, the Agency determined that a tolerance should be established at 2.0 ppm. Therefore, EPA is proposing to establish a tolerance in newly recodified 40 CFR 180.396(a)(1) for combined hexazinone residues of concern in or on alfalfa, seed at 2.0 ppm.

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice as follows: In 40 CFR 180.396(a) alfalfa green forage to alfalfa, forage; grass, range to grass, forage; and grass, pasture to grass, hay.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued TREDs for p-chlorophenoxyacetic acid, difenzoquat, and hexazinone. Glyphosate tolerances were reassessed post-FQPA as part of the Agency's determinations on April 11, 1997 (62 FR 17723) to establish new glyphosate uses and therefore a TRED to reassess its tolerances was not needed. All of these active ingredients had REDs which were completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

C. When do These Actions Become Effective?

EPA is proposing that these revocations, modifications, establishments of tolerances, and commodity terminology revisions become effective on the date of publication of the final rule in the **Federal Register**. For this rule, proposed revocations will affect tolerances for uses which have been canceled for many years or are no longer needed. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 3, 2006 to reassess the tolerances in existence on August 2, 1996. As of April 19, 2006, EPA has reassessed over 8,070 tolerances. Regarding tolerances mentioned in this proposed rule, tolerances in existence as of August 2, 1996 were previously counted as reassessed at the time of the signature completion of a post-FQPA RED or TRED for each active ingredient. Therefore, no further tolerance reassessments would be counted toward the August 2006 review deadline.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**''—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866,entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132,entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 30, 2006.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In §180.202, paragraph (a) is revised to read as follows:

§ 180.202 p-Chlorophenoxyacetic acid; tolerances for residues.

(a) *General.* A tolerance is established for the combined residues of the plant regulator p-chlorophenoxyacetic acid and its metabolite p-chlorophenol to inhibit embryonic root development in or on the following food commodity:

Commodity	Parts per million
Bean, mung, sprouts	0.2

* * * * *

3. In §180.364, the table in paragraph (a) is revised to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Acerola	0.2
Alfalfa, seed	0.5
Almond, hulls	25
Animal feed, nongrass, group 18	400
Aloe vera	0.5
Ambarella	0.2
Artichoke, globe	0.2
Asparagus	0.5
Atemoya	0.2
Avocado	0.2
Bamboo, shoots	0.2
Banana	0.2
Barley, bran	30

Commodity	Parts per million
Barley, grain	20
Beet, sugar, dried pulp	25
Beet, sugar, roots	10
Beet, sugar, tops	10
Berry group 13	0.2
Betelnut	1.0
Biriba	0.2
Blimbe	0.2
Borage, seed	0.1
Breadfruit	0.2
Cactus, fruit	0.5
Cactus, pads	0.5
Canistel	0.2
Canola, meal	15
Canola, seed	10
Cattle, kidney	4.0
Cattle, liver	1.0
Chaya	1.0
Cherimoya	0.2
Citrus, dried pulp	1.5
Cacao bean	0.2
Coconut	0.1
Coffee, bean	1.0
Corn, field, forage	6.0
Corn, field, grain	1.0
Cotton, gin byproducts	175
Cotton, undelinted seed	35
Cranberry	0.2
Crambe, seed	0.1
Custard apple	0.2
Date	0.2
Dokudami	2.0
Durian	0.2
Egg	0.05
Epazote	1.3
Feijoa	0.2
Fig	0.2
Fish	0.25
Flax, meal	8.0
Flax, seed	4.0
Fruit, citrus, group 10	0.5
Fruit, pome, group 11	0.2
Fruit, stone, group 12	0.2
Galangal, root	0.2
Ginger, white, flower	0.2
Goat, kidney	4.0
Goat, liver	0.5
Gourd, buffalo, seed	0.1
Governor's plum	0.2
Gow kee, leaves	0.2
Grain, aspirated fractions	100.0
Grain, cereal, forage, fodder and straw, group 16	100
Grain, cereal, group 15, except barley, field corn, grain sorghum, oat and wheat	0.1
Grape	0.2
Grass, forage, fodder and hay, group 17	300
Guava	0.2
Herbs subgroup 19A	0.2
Hog, kidney	4.0
Hog, liver	1.0
Hop, dried cones	7.0
Horse, kidney	4.0
Horse, liver	0.5
Ilama	0.2
Imbe	0.2
Imbu	0.2
Jaboticaba	0.2
Jackfruit	0.2
Jojoba, seed	0.1
Juneberry	0.2
Kava, roots	0.2
Kenaf, forage	200
Kiwifruit	0.1
Lesquerella, seed	0.1
Leucaena, forage	200

Commodity	Parts per million
Lingonberry	0.2
Longan	0.2
Lychee	0.2
Mamey apple	0.2
Mango	0.2
Mangosteen	0.2
Marmaladebox	0.2
Meadowfoam, seed	0.1
Mioga, flower	0.2
Mustard, seed	0.1
Nut, pine	1.0
Nut, tree, group 14	1.0
Oat, grain	20
Okra	0.5
Olive	0.2
Oregano, Mexican, leaves	2.0
Palm heart	0.2
Palm heart, leaves	0.2
Palm, oil	0.1
Papaya	0.2
Papaya, mountain	0.2
Passionfruit	0.2
Pawpaw	0.2
Peanut	0.1
Peanut, forage	0.5
Peanut, hay	0.5
Pepper leaf, fresh leaves	0.2
Peppermint, tops	200
Perilla, tops	1.8
Persimmon	0.2
Pineapple	0.1
Pistachio	1.0
Pomegranate	0.2
Poultry, meat	0.1
Poultry, meat byproducts	1.0
Pulasan	0.2
Quinoa, grain	5.0
Rambutan	0.2
Rapeseed, meal	15
Rapeseed, seed	10
Rose apple	0.2
Safflower, seed	0.1
Salal	0.2
Sapodilla	0.2
Sapote, black	0.2
Sapote, mamey	0.2
Sapote, white	0.2
Sesame, seed	0.1
Sheep, kidney	4.0
Sheep, liver	0.5
Shellfish	3.0
Sorghum, grain, grain	15
Soursop	0.2
Soybean, seed	20
Soybean, forage	100
Soybean, hay	200
Soybean, hulls	100
Spanish lime	0.2
Spearmint, tops	200
Spice subgroup 19B	7.0
Star apple	0.2
Starfruit	0.2
Stevia, dried leaves	1.0
Strawberry	0.2
Sugar apple	0.2
Sugarcane, cane	2.0
Sugarcane, molasses	30
Sunflower, seed	0.1
Surinam cherry	0.2
Tamarind	0.2
Tea, dried	1.0
Tea, instant	7.0
Teff, grain	5.0
Ti, leaves	0.2

Commodity	Parts per million
Ti, roots	0.2
Ugli fruit	0.5
Vegetable, brassica, leafy, group 5	0.2
Vegetable, bulb, group 3	0.2
Vegetable, cucurbit, group 9	0.5
Vegetable, foliage of legume, subgroup 7A, except soybean	0.2
Vegetable, fruiting, group 8	0.1
Vegetable, leafy, group 4	0.2
Vegetable, leaves of root and tuber, group 2, except sugar beet tops	0.2
Vegetable, legume, group 6, except soybean	5.0
Vegetable, root and tuber, group 1, except sugar beet	0.2
Wasabi, roots	0.2
Water spinach, tops	0.2
Watercress, upland	0.2
Wax jambu	0.2
Wheat, bran	20
Wheat, grain	5.0
Wheat, middlings	20
Wheat, shorts	20
Yacon, tuber	0.2

* * * * *

4. Section 180.369 is amended by designating the current text as paragraph (a) and adding the heading; by revising the table; and by adding and reserving paragraphs (b), (c), and (d) with headings to read as follows:

§ 180.369 Difenzoquat; tolerances for residues.

(a) *General* * * *

Commodity	Parts per million
Barley, bran	0.25
Barley, grain	0.05
Barley, straw	5.0
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat byproducts	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Wheat, bran	0.25
Wheat, grain	0.05
Wheat, shorts	0.25
Wheat, straw	5.0

(b) *Section emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inavertant residues.* [Reserved]

5. In §180.396, paragraphs (a) and (c) are revised to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], D [3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione] (calculated as hexazinone) in the following commodities:

Commodity	Parts per million
Alfalfa, forage	2.0
Alfalfa, hay	8.0
Alfalfa, seed	2.0
Blueberry	0.6
Grass, hay	10.0
Grass, forage	10.0
Pineapple	0.6

(2) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its animal tissue metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], and F [3-cyclohexyl-6-amino-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione] (calculated as hexazinone) in the following food commodities:

Commodity	Parts per million
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
Horse, meat	0.1
Horse, meat byproduct	0.1
Sheep, meat	0.1
Sheep, meat byproducts	0.1

(3) Tolerances are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its metabolites; B [3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C-1 [3-(2-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], C-2 [3-(3-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione] and F [3-cyclohexyl-6-amino-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione] (calculated as hexazinone) in milk:

Commodity	Parts per million
Milk	0.2

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in §180.1(n) and which excludes use of hexazinone on sugarcane in Florida, are established for the combined residues of hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione and its plant metabolites; A [3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione], B [3-cyclohexyl-6-

(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], C [3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione], D [3-cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione], and E [3-(4-hydroxycyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione] (calculated as hexazinone) in the following commodities:

Commodity	Parts per million
Sugarcane, cane	0.6
Sugarcane, molasses	4.0

* * * * *

[FR Doc. E6–8827 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1052; MB Docket No. 05–145, RM–11212]

Radio Broadcasting Services; Hermitage and Mercer, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rule making, as requested by Petitioner Cumulus Licensing LLC, licensee of Station WWIZ(FM), Mercer, Pennsylvania, which proposed to reallot Channel 280A from Mercer to Hermitage, Pennsylvania, and modify the license of WWIZ accordingly. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–145, adopted May 17, 2006, and released May 19, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8732 Filed 6–6–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–99–6223 (HM–213B)]

RIN 2137–AD36

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: PHMSA is closing this rulemaking proceeding, having considered and declined to adopt proposals for further regulating the transportation of flammable liquids in the product piping on cargo tank motor vehicles. On the basis of public comments and additional data and analysis, PHMSA has concluded that further regulation would not produce the level of benefits we originally expected and that the quantifiable benefits of proposed regulatory approaches would not justify the corresponding costs. Although PHMSA is withdrawing its rulemaking proposal, the agency will develop and implement an outreach program to educate the industry, first responder community, and the public about potential risks associated with unprotected product pipelines on these vehicles and will continue to collect data and other information in order to address the issue further if warranted.

FOR FURTHER INFORMATION CONTACT: Ben Supko, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553; or Michael Stevens, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 2004 the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a notice of proposed rulemaking (NPRM) (69 FR 78375) inviting comments on a proposal to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to prohibit the carriage of flammable liquids in the product piping (wetlines) on cargo tank motor vehicles (CTMVs), unless the CTMV is equipped with bottom damage protection devices. We proposed a quantity limit of one liter or less in each pipe. We did not propose a specific method for achieving this standard. The NPRM included an exception from the proposed requirements for truck-mounted (*e.g.,* straight truck) DOT specification CTMVs. We proposed to make the changes effective two years after the effective date of a final rule and to permit CTMV operators five years to phase in requirements applicable to existing CTMVs.

II. Comments on the NPRM

We received thirty sets of public comments on the NPRM from a variety of stakeholders, including industry associations, companies, governmental entities, individuals and members of Congress, as follows:

Commenter	Document number
Maurice R. Tetreault	RSPA–1999–6223–28
American Petroleum Institute (API)	RSPA–1999–6223–32
Georgia Department of Motor Vehicle Safety	RSPA–1999–6223–33
Southwest Research Institute	RSPA–1999–6223–34
David M. Lawler	RSPA–1999–6223–35
Dale L. Botkin	RSPA–1999–6223–37
Public Utilities Commission of Ohio	RSPA–1999–6223–38

Commenter	Document number
National Transportation Safety Board (NTSB)	RSPA–1999–6223–39
California Air Resources Board	RSPA–1999–6223–41
Magellan Midstream Partners, L.P.	RSPA–1999–6223–42
Laura E. Herman	RSPA–1999–6223–45
National Tank Truck Carriers, Inc. (NTTC)	RSPA–1999–6223–46
API	RSPA–1999–6223–47
Great Lakes Transport, LLC	RSPA–1999–6223–48
Anthony C. Pitfield	RSPA–1999–6223–49
The Dow Chemical Company (Dow)	RSPA–1999–6223–50
Truck Trailer Manufacturers Association (TTMA)	RSPA–1999–6223–51
Petroleum Marketers Association of America (PMAA)	RSPA–1999–6223–52
Dangerous Goods Advisory Council	RSPA–1999–6223–53
Saraguay Petroleum Corp (Saraguay Petroleum)	RSPA–1999–6223–54
Petroleum Transportation and Storage Association (PTSA)	RSPA–1999–6223–55
Baltimore Cargo Tank Services, Inc.	RSPA–1999–6223–56
American Trucking Associations (ATA)	RSPA–1999–6223–57
Cargo Tank Concepts, Ltd. (CTC)	RSPA–1999–6223–58
Minnesota Trucking Association	RSPA–1999–6223–59
Society of Independent Gasoline Marketers of America (SIGMA)	RSPA–1999–6223–60
Brenner Tank LLC	RSPA–1999–6223–61
Denny Rehberg, Member of Congress	RSPA–1999–6223–62
TTMA	RSPA–1999–6223–63
ATA	RSPA–1999–6223–64
The Honorable Thomas E. Petri	RSPA–1999–6223–65
The Honorable Conrad Burns	RSPA–1999–6223–66
The Honorable Michael Sodrel	RSPA–1999–6223–67

The comments are available for review through DOT's electronic Docket Management System (on the Web site *http://dms.dot.gov*).

Many of the commenters took issue with our original estimates of costs and benefits in the regulatory evaluation prepared in support of the NPRM. Generally, these commenters assert we underestimated the number of cargo tanks affected and the cost of retrofits and over-estimated the number and severity of wetlines incidents. Commenters also question the effectiveness, reliability, efficiency, and functionality of currently available technology to purge lading from wetlines.

III. Revised Regulatory Evaluation

Based on comments received in response to the NPRM, we re-evaluated the data and information concerning potential costs and benefits of regulatory alternatives to ensure that any final rule prohibiting the transportation of flammable liquids in unprotected wetlines would maximize the net benefit to society.

Our revised regulatory review included reassessment of the number of accidents involving wetlines and fatalities, injuries, and property damage resulting from those accidents. We also revised our estimate of the number of vehicles potentially affected by rulemaking action and the technology currently available to purge flammable liquids from wetlines to ascertain its effectiveness and practicability in the transportation environment. The following table summarizes the overall costs and benefits, calculated over a 20-year period using a seven percent discount rate, for the three options considered in the 2006 regulatory evaluation:

PRESENT VALUE COSTS AND BENEFITS OF RULE

Alternatives	P.V. total cost	P.V. total benefit	Benefit-cost ratio
Purging System on New Trucks	$23,847,613	$25,377,985	1.06
Purging System on Trucks Manufactured on or After January 1, 2002	35,968,401	38,902,738	1.08
Purging System on New and Existing Trucks	53,595,422	50,945,401	0.95

The revised regulatory evaluation assumes a total of 27,000 vehicles would be affected by a final rule, and the cost to install a purging system would be $1,600 per tank on newly manufactured CTMVs and $1,760 to retrofit existing CTMVs. We also assumed the average service life for a CTMV in flammable liquid service is 20 years; thus, five percent of the fleet would be retired each year.

In measuring the benefits of wetlines regulation, we considered avoided injuries, property damage, traffic delays, evacuations, emergency response, and environmental damage. These benefits are scaled to account for underreporting of wetlines incidents, particularly for the period prior to October 1998, when DOT incident reporting requirements were extended to intrastate operations.

In response to concerns expressed by commenters, we reexamined available data for each of the 190 incidents that had been attributed to wetlines in the original regulatory analysis, applying revised criteria to isolate those that, by virtue of their circumstances, could be verified as wetlines incidents. In 42 of these cases, we found that the incident-related injuries, property damage, and other costs could not be attributed to the risk associated with unprotected wetlines. For instance, the revised regulatory analysis excludes incidents in which both the wetline and the cargo tank were breached and does not include incidents involving spills of more than 50 gallons, unless a fire resulted from the spill. Using incident data reported to DOT from January 1, 1990 through December 31, 2001, we

identified 148 CTMV incidents involving wetlines. These incidents resulted in seven fatalities, three injuries, and over $7 million in property damage.

Because of commenters' questions and concerns about many of the assumptions used to develop the regulatory evaluation for the NPRM, we performed a sensitivity analysis to calculate the benefits and costs of the three identified options by changing the variables used, including the number of affected vehicles, the installation costs for a non-welded purging system, and the number of wetlines incidents. PHMSA concludes from the sensitivity analysis that the benefit-cost ratios for the new-construction-only option could range from a low of .73/1 (assuming the highest possible costs and lowest possible benefits) to a high of 1.20/1 (assuming the lowest possible costs and highest possible benefits). A complete discussion of the sensitivity analysis is included in the regulatory evaluation in the public docket for this proceeding.

For purposes of the analysis in the regulatory evaluation, we identified an on-truck purging system as the low-cost alternative for compliance with the performance standard at issue in this rulemaking proceeding. The purging system utilizes 5 psi of air pressure from the CTMV's compressed air tanks to purge the loading lines. The system routes the product from the lowest point in the piping to the tank shell through 0.5 inch braided stainless steel lines. Purging the loading lines on a four-compartment cargo tank takes six minutes.

The purging system represents the lowest cost, most efficient solution available for the elimination of wetlines. However, as noted above, many commenters question the effectiveness, reliability, efficiency, and functionality of purging systems. We agree with commenters that the current technology may cause problems unrelated to the wetlines issue it is designed to address. Although most of these problems may be corrected or avoided, we have determined that the benefits of imposing solutions through regulation would not justify the costs of such action.

Finally, we note that the industry is taking action voluntarily to limit the safety risks associated with the transportation of flammable liquids in unprotected wetlines. One large gasoline distributor has installed purging systems on its CTMVs. Another large gasoline distributor has installed damage protection equipment on its CTMVs that could help to mitigate the consequences of a collision with an automobile or other vehicle. We urge the regulated community to continue its efforts voluntarily to identify and implement measures to address this issue. We also plan to develop and implement an outreach program to educate the industry, first responder community, and the public about the potential risks associated with wetlines. We will continue to collect relevant information concerning wetlines incidents and technological developments affecting wetlines transportation.

IV. Conclusion

In the final analysis, we did not identify a cost-effective approach for addressing the risk of wetlines transportation through regulatory action. Based on the revised regulatory evaluation, we believe the benefits of a final rule prohibiting the transportation of flammable liquids in wetlines only on newly constructed CTMVs may slightly outweigh the costs. However, given the sensitivity of the benefit-cost determinations to variations in the data and the inherent margin for error in the overall analysis, it is possible, even for newly constructed CTMVs, the costs of a regulatory solution will outweigh potential benefits.

Accordingly, PHMSA is withdrawing the December 30, 2004 NPRM and terminating this rulemaking proceeding.

Issued in Washington, DC, on May 31, 2006, under authority delegated in 49 CFR part 1.

Brigham A. McCown,

Acting Administrator.

[FR Doc. E6–8782 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[I.D. 052506A]

RIN 0648–AT95

Fisheries in the Western Pacific; Omnibus Amendment for the Bottomfish and Seamount Groundfish Fisheries, Crustacean Fisheries, and Precious Coral Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of FMP amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (WPFMC) proposes to amend three fishery management plans (western Pacific omnibus amendment) to include fisheries in waters around the Commonwealth of the Northern Mariana Islands (CNMI) and Pacific Remote Island Areas (PRIA). These amendments would establish new permitting and reporting requirements for vessel operators targeting bottomfish species around the PRIA to improve understanding of the ecology of these species and the activities and harvests of the vessel operators that target them. It would also establish new permitting and reporting requirements for vessel operators targeting crustacean species and precious coral around the CNMI and PRIA.

DATES: Comments on the amendment must be received by August 7, 2006.

ADDRESSES: Comments on the western Pacific omnibus amendment, identified by 0648–AT95, should be sent to any of the following addresses:

- E-mail: *AT95Omnibus@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier ''AT95 Omnibus.'' Comments sent via e-mail, including all attachments, must not exceed a 5 megabyte file size.
- Federal e-Rulemaking portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700.

Copies of the western Pacific omnibus amendment, the Environmental Assessment, and related analyses may be obtained from Kitty M. Simonds, Executive Director, WPFMC, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or on the internet at *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION: The western Pacific omnibus amendment, developed by the WPFMC, has been submitted to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act. This document announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove the western Pacific omnibus amendment.

The Pacific Islands region encompasses Federal waters, i.e., the U.S. Exclusive Economic Zone (EEZ), around the Territories of Guam and American Samoa, the State of Hawaii, the CNMI, and the PRIA. The inner boundary of the EEZ is the seaward limit of each coastal state, commonwealth, territory and possession. The EEZ extends from this inner boundary to 200 nautical miles (nm) offshore.

The WPFMC has developed, and NMFS has approved and implemented, five fishery management plans covering pelagic species, crustaceans, bottomfish and seamount groundfish, precious corals, and coral reef ecosystems fisheries. Federal waters around the CNMI are currently not included in the Fishery Management Plans for the Bottomfish, Crustaceans, or Precious Corals Fisheries of the Western Pacific Region (Bottomfish FMP), Crustaceans FMP), and (Precious Corals FMP). Federal waters around the PRIAs are not included in the Bottomfish or Crustaceans FMP, except for Midway Atoll. Therefore, Federal fisheries management, including data collection, is limited for these areas. New fishery developments suggest to the WPFMC that the preliminary step of including these waters under the FMPs is necessary to facilitate further steps to monitor fish catches, and to implement other management measures if needed in the future. Amendment 8 to the Bottomfish FMP, Amendment 12 to the Crustaceans FMP, and Amendment 6 to the Precious Corals FMP would include the fisheries operating in these areas under the FMPs.

The omnibus amendment has the following objectives:

1. To improve the database for future bottomfish management decisions through data reporting requirements (Bottomfish FMP);

2. To collect and analyze biological and economic information about lobster fisheries and improve the statistical base for conservation and management in the future (Crustaceans FMP); and

3. To encourage the acquisition and analysis of new information concerning the distribution, abundance and ecology of precious corals (Precious Corals FMP).

After considering a wide range of management options, including many options suggested by the public during a public scoping process, the WPFMC recommended the following management measures.

CNMI Management Measures

1. Include the CNMI EEZ as a management area in the Bottomfish FMP, with regulations applied only to the offshore area (3 to 200 nm, again the EEZ around the CNMI extends from the shoreline to 200 nm, but the WPFMC recommends deferring regulatory control for fishing by CMNI citizens in waters 0 to 3 nm of the EEZ around CNMI; however, the FMP amendments do not confer authority to CNMI over EEZ resources), and with no new Federal permitting or reporting requirements;

2. Include the CNMI EEZ under the Crustaceans FMP, with regulations applied to the offshore area (3 to 200 nm), and include existing permit and reporting requirements; and

3. Include the CNMI EEZ in the Precious Corals FMP, with regulations applied to the offshore area (3 to 200 nm), and include existing exploratory area permit and reporting and quota requirements.

PRIA Management Measures

1. Include the PRIA EEZ (0–200 nm) in the Bottomfish FMP, and implement new Federal permitting and reporting requirements for all vessels targeting bottomfish management unit species; and

2. Include the PRIA EEZ under the Crustaceans FMP, and include existing Federal permitting and reporting requirements.

This action is designed to establish mechanisms to implement specific regulatory controls should the need arise; specific management measures (such as time and area closures, or effort and landing limits) are not included.

Public comments on the western Pacific omnibus amendment must be received by August 7, 2006, to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the amendment has been submitted for Secretarial review and approval.

NMFS expects to publish and request public comment on the proposed regulation in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–8860 Filed 6–6–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 1, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. Accordingly, RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE ACT) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS borrower will use form 369, *Request for Approval to sell capital assets,* to seek agency permission to sell some of its assets. The form is used to collect detailed information regarding the proposed sale of a portion of the borrower's systems. RUS will collect information to determine whether or not the agency should approve a sale and also to keep track of what property exists to secure the loan. If the information in Form 369 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 15.

Rural Utility Service

Title: 7 CFR part 1755, Telecommunications Standards and Specifications.

OMB Control Number: 0572–0132.

Summary of Collection: 7 CFR part 1755 establishes Agency policy that materials and equipment purchased by RUS telecommunications borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS IP 344–02, ''List of Materials Acceptable for Use on Telecommunications System of RUS Borrowers'', must be selected from that list or must have received technical acceptance from RUS. To protect the security of loans it makes and to ensure that the telecommunications services provided to rural Americans are comparable to those offered in urban and suburban areas, RUS establishes the minimum acceptable performance criteria for materials and equipment to be employed on telecommunications system financed by RUS. Manufacturers wishing to sell their products to RUS borrowers, request RUS' consideration for acceptance of their products and submit data demonstrating their products' compliance with RUS specification.

Need and Use of the Information: RUS will evaluate the data to determine that the quality of the products is acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data, product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,400.

Rural Utility Service

Title: Telecommunications Field Trials.

OMB Control Number: 0572–0133.

Summary of Collection: Title 7 CFR part 1755.3 prescribes the conditions and provision of a field trial. Field trials are contractual obligations that a manufacturer and Rural Utility Service (RUS) telecommunications borrower enter into. They consist of limited field installation of a qualifying product in closely monitored situations designed to

determine, to RUS' satisfaction, the products effectiveness under actual field conditions. RUS will use field trials as a means for determining the operational effectiveness of a new or revised product where such experience does not already exist. Field trial process allows: Manufacturers a means of immediate access to the RUS borrower market, RUS borrowers opportunity to immediately utilize advance products, and provides for RUS a means to safely obtain necessary information on technically advanced products which will address the products suitability for use in the harsh environment of rural America.

Need and Use of the Information: RUS will use various forms to enter into contractual obligations, to establish an agreement by RUS, the manufacturer and a borrower, or identify the product(s) that are under field trial. Telecommunication borrowers participate in field trials do so on a voluntary basis. The information is closely reviewed to determine that the products comply with the established RUS standards and specifications and that the products are otherwise acceptable for use on rural telecommunications systems. Without this information, RUS has no means of determining the acceptability of advanced technology in a manner that is timely enough for RUS borrowers to take advantage of the improved benefits and promise that such products may provide for rural America.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 54.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8786 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 1, 2006.

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National Agriculture Statistics Service

Title: NIOSH Farm Hazard Survey.

OMB Control Number: 0535–New.

Summary of Collection: Primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production under the authority of 7 U.S.C. 2204(a). NASS has been asked by the National Institute of Occupational Safety Health (NIOSH) to conduct a national farm hazard, injury, and illness survey. The survey is designed to provide estimates of the frequency of injury and illness hazards on farms; the number of farm operators, workers, and farm youth potentially exposed to these hazards; the association between hazards and the type of farming operation; and the annual occupational nonfatal injury and illness incidence rates for farm operators.

Need and Use of the Information: Data from this survey will provide source of consistent information that NIOSH can use to target funds appropriated by Congress for the prevention of childhood agricultural injuries and adult occupational injuries. In particular, it will provide information on which farm hazards and health outcomes most need to be addressed. No source of data on childhood injuries or adult occupational farm injuries exists that covers all aspects of the agricultural production sector.

Description of Respondents: Farms.

Number of Respondents: 25,500.

Frequency of Responses: Reporting: Other: One-time.

Total Burden Hours: 8,496.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8787 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposals/Possible Action, (5) General Discussion, (6) Next Agenda.

DATES: The meeting will be held on June 26, 2006, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Janet Flanagan, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95939. (530) 934–1268; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 23, 2006 will have the opportunity to address the committee at those sessions.

Dated: June 1, 2006.

Janet Flanagan,

Acting Designated Federal Official.

[FR Doc. 06–5162 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA

ACTION: Action of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Thursday and Friday, July 13 and 14, 2006, at Diamond Lake Resort, Oregon. The meeting is scheduled to begin at 8 a.m. and conclude at 5:30 p.m. on July 13 and begin at 8 a.m. and conclude at 4:30 p.m. on July 14. On July 13, the agenda includes: (1) Approval of 2005 and 2006 meeting minutes. (2) approval of RAC expenses, (3) review of past and proposed projects in Douglas County at 8:30 a.m., (4) Public Forum at 10:30 a.m., and (5) review of past and proposed projects for Lane County at 4 p.m. The agenda for July 14 includes (1) Review of past and proposed projects for Klamath County at 8:30 a.m., (2) Public Forum at 9:45 a.m., (3) review of past and proposed projects for Jackson County at 10:15 a.m., (4) Stewardship collaboration project at 2:30 p.m., and (5) closing remarks at 4:15 p.m. Written public comments may be submitted prior to the July meeting by sending them to Designated Federal Official Richard Sowa at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Richard Sowa; Umpqua National Forest; 2900 NW Stewart Parkway, Roseburg, Oregon 97470; (541) 957–3203.

Dated: May 31, 2006.

Richard Sowa,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 06–5179 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, June 23, 2006, at the Salkum Fire Hall, 2495 U.S. Highway 12, Salkum, Wash. The meeting will begin at 9:30 a.m. and continue until 4 p.m. The purpose of the meeting is to: Review ongoing Title II and III projects, elect a chairperson and vice-chair, set an indirect project percentage, review summary of Title II and Title III accomplishments and make recommendations on 16 proposals for Title II funding of projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:40 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: June 1, 2006.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 06–5180 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC22

Predator Damage Management in Wilderness Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for comment.

SUMMARY: The Forest Service is proposing to revise its directives on predator damage management in wilderness areas. Guidance to Forest officers in the management of predator damage in wilderness areas is contained in the Forest Service Manual (FSM) Title 2300, Recreation, Wilderness, and Related Resources Management and FSM 2600, Wildlife, Fish, and Sensitive Plant Habitat Management. These proposed directives would conform agency direction regarding predator damage with provisions in an interdepartmental Memorandum of Understanding (MOU) between the USDA Animal and Plant Health Inspection Service, Wildlife Services Division and the USDA Forest Service. The MOU, first entered into in 1993, was renewed in 1998, and again in 2004, with minor revisions. Comments received in response to this notice will be considered in development of the final directives for predator damage management on National Forest System lands, including wilderness.

DATES: Comments must be received in writing by August 7, 2006.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director, Wilderness and Wild and Scenic Rivers Resources, 201 14th Street, SW., Washington, DC 20250; by electronic mail to *PDM@fs.fed.us*; or by fax to (202) 205–1145. Comments may also be submitted by following the instructions at the Federal e-Rulemaking portal, *http://www.regulations.gov*. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the proposed directives; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed. The Forest Service may not include in the administrative record for the proposed directives those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in this **ADDRESSES** section.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on these proposed directives in the Office of the Director, Wilderness and Wild and Scenic Rivers Staff, Forest Service, USDA, 4th Floor-Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. to 4 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1706 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Don Fisher, Wilderness Program, (202) 205–1414, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

1. Background

The USDA Animal and Plant Health Inspection Service, Wildlife Service

Division (APHIS–WS) and the Forest Service cooperate in wildlife damage management activities on National Forest System (NFS) lands as provided for in the Animal Damage Control Act of 1931 (7 U.S.C. 426–426b). Processes and procedures between the two agencies were adopted in a Memorandum of Understanding (MOU) signed June 18, 1993, and published in the **Federal Register** on July 13, 1993 (58 FR 37704). The MOU was renewed and slightly revised in 1998 and again in 2004. The 2004 version of the MOU is available from the Forest Service directives system in FSM 1543.13 and available from the World Wide Web at *http://www.fs.fed.us*. The purpose of the MOU is to: (1) Identify responsibilities of the respective agencies and foster a partnership in discharging the Federal obligation under the Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426b), for the management of wild vertebrates causing damage on NFS lands, (2) establish general guidelines to assist field personnel in carrying out their wildlife damage management responsibilities consistent with policies of APHIS–WS and the Forest Service, and (3) strengthen the cooperative approach to wildlife damage management on NFS lands through the exchange of information and mutual program support. The current MOU clarifies that the APHIS–WS is the responsible agency for developing, with the cooperation of the Forest Service, predator damage work plans that are in conformance with applicable Forest land management and wilderness plans.

On May 4, 1995, the Forest Service revised agency direction in Forest Service Manual (FSM) 2651 (60 FR 22037) to clarify and conform agency directives with the MOU adopted in 1993. The changes to FSM 2323.33c and 2651 proposed in this notice are intended to further refine and clarify agency roles and procedures for wildlife damage management activities on NFS lands so that they are consistent with the 2004 revised MOU.

2. Summary of Proposed Revisions

FSM 2323.33c—Predator Damage Management

The title to FSM 2323.33c is changed from ''Predator Control'' to ''Predator Damage Management.'' The proposed revisions to this section are intended to strengthen the Forest Service's role in working with APHIS–WS and State fish and wildlife agencies in wildlife damage management activities, while recognizing that APHIS–WS and State fish and wildlife agencies have the authority and expertise to conduct wildlife damage management activities in wilderness on NFS lands. For this reason, the Forest Service is removing a provision in current policy that requires case-by-case Regional Forester approval for predator management activities in wilderness areas. In the proposed revision, predator management activities in wilderness areas may occur when they are conducted in accordance with an approved predator management plan and provisions in FSM 2651.6.

Paragraph 1 establishes objectives for predator damage management activities in wilderness, such as the protection of public health and safety and the protection of threatened or endangered species; the achievement of management goals and objectives for wildlife populations as identified in forest or wilderness plans or through other collaborative processes; and the prevention of serious loss of domestic livestock.

Paragraph 2 establishes policy for conducting predator damage management activities in wilderness by requiring minimal disturbance to wilderness visitors and resources, the protection of wilderness character, and coordination with other government entities involved in predator damage management activities. The policy also recognizes predators in the ecological integrity of wilderness and adjacent non-wilderness lands, and prohibits predator damage management activities that would jeopardize the continued viability of predator populations in the ecosystem.

Paragraph 3 provides authority for the Regional Forester to permit the use of aircraft, motorized equipment and mechanical transport, and pesticides in wilderness areas under certain conditions.

Paragraph 4 provides a framework for coordination and cooperation between APHIS–WS and the Forest Service, including agency roles and responsibilities for preparing predator management plans (para. 4a), NEPA documents (para. 4b) and provisions for conflict resolution (para. 4c).

Paragraph 5 commits the Forest Service to coordinate and cooperate with States lawfully conducting predator management activities on National Forest wildernesses.

FSM 2651.6—Wildlife and Fish Damage Management in Wilderness and Research Natural Areas

The title and areas of applicability in this section is changed from ''Wildlife and Fish Damage Management in Wilderness Areas'' to ''Wildlife and Fish Damage Management in Wilderness and Research Natural Areas.'' The proposed revisions to this section removes the criterion authorizing animal damage management only when it was used prior to wilderness designation and also expands the criteria for allowing wildlife damage management activities in a wilderness or a Research Natural Area and clarifies that meeting only one criterion is necessary for those activities to proceed.

3. Regulatory Certifications

Environmental Impact

These proposed directives revise the administrative policies and procedures for conducting animal damage management activities on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency's preliminary assessment is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

These proposed directives have been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant action. The proposed directives would not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. The proposed directives would not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of such programs.

No Takings Implications

These proposed directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed directives do not pose the risk of a taking of constitutionally protected private property.

Civil Justice Reform

These proposed directives have been reviewed under Executive Order 12988,

Civil Justice Reform. The Agency has not identified any State or local laws or regulations that are in conflict with these proposed directives or that would impede full implementation of the proposed directives. Nonetheless, in the event that such a conflict were to be identified, the proposed directives, if implemented, would preempt the State and local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to these proposed directives; and (2) the Department would not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of these proposed directives on State, local, and tribal governments and the private sector. These proposed directives would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Agency has considered these proposed directives under the requirements of Executive Order 13132 on Federalism, and has made an assessment that the proposed directives conform with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of Federalism implications is necessary at this time.

Moreover, these proposed directives do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

Energy Effects

These proposed directives have been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply.'' It has been determined that these proposed directives do not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Editorial Note: This document was received in the Office of the Federal Register on June 2, 2006.

Dated: February 16, 2006.

Sally Collins,

Associate Chief, Forest Service.

4. Proposed Revisions to Predator Management in Wilderness Directives

Note: The Forest Service organizes its Directive System by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees engaged in wildlife damage management activities in wilderness and research natural areas.

Forest Service Manual

Chapter 2320—Wilderness Management

* * * * *

2323.33c—Predator Damage Management

For further direction on predator damage management, see FSM 2651. For a copy of the Master Memorandum of Understanding between the Animal and Plant Health Inspection Service, Wildlife Services (APHIS–WS) and Forest Service, see FSM 1543.13.

1. *Objectives.* The objectives of predator damage management in wilderness are to:

a. Protect public health and safety.

b. Protect Federally listed threatened or endangered species.

c. Achieve management goals and objectives for wildlife populations as identified for wilderness in forest or wilderness plans, or through other collaborative processes, such as Comprehensive Wildlife Conservation Strategies, memorandums of understanding with State fish and wildlife agencies, and so forth.

d. Prevent serious loss of domestic livestock.

2. *Policy.*

a. Predator damage management activities shall be conducted in a manner that protects wilderness character and minimizes disturbances to wilderness resources and visitors.

b. Predator damage management control measures shall be directed at the offending animal or local population and shall not jeopardize the continued viability of predator populations in the ecosystem.

c. Predator damage management work plans shall be developed in cooperation with the APHIS–WS for specific wildernesses or for a network of wildernesses and non-wilderness lands that connect them and reviewed annually in cooperation with APHIS–WS.

d. When participating in the development and annual review of a predator damage management work plan in a wilderness area, Forest Service officers shall strongly discourage the use of poison baits, such as M–44 devices and livestock protection collars, except in specific cases where there is compelling evidence that other forms of predator damage management have proven to be ineffective.

e. Forest Service officials shall coordinate and cooperate with other government entities who have responsibility and expertise for managing predator damage, such as the APHIS–WS and State fish and game agencies.

f. The role of predator species in contributing to the ecological integrity of wilderness and adjacent non-wilderness lands shall be recognized in predator damage management work plans and National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) documents.

3. *Authorization Responsibility for Specific Uses:*

a. Landing of aircraft and use of motorized equipment and mechanical transport to facilitate implementation of predator damage management activities in wilderness areas may only occur if authorized by the Regional Forester upon a determination that these uses are necessary to meet minimum requirements for the administration of the area. Determination of necessity is appropriate where:

(1) An emergency situation requires immediate, short-term relief, or

(2) An analysis indicates that one of these uses is the minimum tool necessary to accomplish the predator damage management activity.

b. The Regional Forester may authorize use of pesticides for predator damage management activities when documented on Form FS–2100–2, Pesticide Use Proposal (FSM2150).

4. *Inter-Agency Coordination With the Animal and Plant Health Inspection*

Service, Wildlife Services. The Forest Service recognizes APHIS–WS's authority and expertise for conducting predator damage management activities on National Forest System (NFS) wildernesses. Forest Service employees shall, when coordinating with APHIS–WS on proposed predator damage management activities in wilderness, ensure that these activities support the Forest Service's objectives (para. 1) and policies (para. 2) for predator damage management in wilderness areas.

a. *Predator Damage Management Plans.* The Forest Service shall participate with the APHIS–WS in preparation of their predator damage management work plans for wilderness areas. Predator damage management work plans shall be reviewed and updated annually.

b. *Preparation of National Environmental Policy Act Documents.* The Forest Service shall cooperate with the APHIS–WS in the preparation of environmental analyses for predator damage management activities as required by the NEPA, Title 40, Code of Federal Regulations, section 1501.6, and the Memorandum of Understanding between the APHIS–WS and the Forest Service, dated June 4, 2004 (FSM 1543.13). As a cooperating agency, the Forest Service shall:

(1) Make agency expertise regarding wildlife, wilderness, range, and other staff areas available to the APHIS–WS during the NEPA process. As a minimum, Forest Service participation during the NEPA process shall involve agency experts knowledgeable in wilderness, wildlife, and range management.

(2) Assist in identifying issues; conducting and evaluating public scoping; developing alternatives; and disclosing environmental, economic, and social effects.

(3) Work with the APHIS–WS to ensure decision documents address Forest Service concerns when proposed actions would have an adverse effect upon the wilderness resource and/or the continued viability of native species.

(4) Seek expertise from State fish and wildlife agencies as appropriate.

c. *Conflict Resolution.* When a Forest Service representative determines that a proposed management activity may have an adverse affect on wilderness resources or the continued viability of a native species, the Forest Service representative shall work with their APHIS–WS counterpart to resolve the Forest Service's concern. If the dispute cannot be resolved, the issue shall be elevated to the next organizational level within each agency.

5. *Coordination with State Governments and Private Individuals.* The Forest Service recognizes that State agencies have authority and expertise to conduct predator damage management on NFS lands, including wilderness, and that State agencies and private individual may perform predator damage management on NFS lands when conducted in accordance with applicable State and Federal laws, regulations, and policies. The Forest Service shall coordinate and cooperate with States and private individuals when predator damage management is conducted under State authority to ensure that wilderness resources on NFS lands are protected.

* * * * *

Chapter 2650—Animal Damage Management

* * * * *

2651.6—Wildlife and Fish Damage Management in Wilderness and Research

Natural Areas

For additional direction of wildlife and fish management in wilderness and research natural areas, see FSM 2151, FSM 2323, and FSM 4063.

Wildlife damage management, including predator damage management (FSM 2323.33c), is permitted in wilderness when consistent with direction in FSM 2323 and when needed to address one or more of the following issues:

1. Protect public health and safety.

2. Protect Federally listed threatened or endangered species.

3. Achieve management goals and objectives for wildlife populations as identified for wilderness in forest or wilderness plans, or through other collaborative processes, such as Comprehensive Wildlife Conservation Strategies, memorandums of understanding with State fish and wildlife agencies, and so forth.

4. Prevent serious loss of domestic livestock.

Management of non-indigenous species is also permitted when consistent with the applicable Forest land management plan to reduce conflicts with indigenous species.

* * * * *

[FR Doc. E6–8839 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sandy River, Kennebec River Watershed, Madison, ME

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of Finding of No Significant Impact.

SUMMARY: The Natural Resources Conservation Service (NRCS) has adopted the Environmental Assessment (EA), prepared by the Federal Energy Regulatory Commission (FERC) in April, 2006, for the Sandy River Project, Madison, Maine (FERC Project No. 11433–016). Upon an independent review of the EA document, NRCS found that the removal of the Sandy River Project dam would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse effects that NEPA is intended to help decision makers avoid and mitigate against. Therefore, NRCS has prepared a Finding of No Significant Impact (FONSI) in compliance with the National Environmental Policy Act (NEPA), as amended, and gives notice that an environmental impact statement is not being prepared.

FOR FURTHER INFORMATION CONTACT: Single copies of the EA and FONSI documents, may be obtained by contacting Mr. Kevin White, District Conservationist, USDA–NRCS, 12 High Street, Suite 3, Skowhegan, ME 04976–1998, (207) 474–8324. For additional information related to this notice, contact Joyce Swartzendruber, State Conservationist, Natural Resources Conservation Service, 967 Illinois Avenue, Suite 3, Bangor, ME 04401–2700; telephone (207) 990–9100, Ext. 3. Comments on the EA and FONSI must be received no later than 30 days after this notice is published.

EFFECTIVE DATE: June 9, 2006.

SUPPLEMENTARY INFORMATION: The sponsoring local organization, Madison Electric Works, concurs with this determination and agrees with carrying forward the proposed project. The objective of the sponsoring local organization is to remove a hydroelectric dam to provide passage for migrating anadromous fish, including Atlantic Salmon and Atlantic Shad.

The FONSI has been forwarded to the Federal Energy Regulatory Agency and to various Federal, State and local agencies and interested parties.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 31, 2006.

Joyce A. Swartzendruber,

State Conservationist.

[FR Doc. E6–8842 Filed 6–6–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency:

U.S. Census Bureau.

Title: 2007 Census of Governments Local Government Directory Survey.

Form Number(s): G–30.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 9,000 hours.

Number of Respondents: 36,000.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests Office of Management and Budget approval of the Local Government Directory Survey form G–30. This form will be used to update the universal list of public sector entities for the 2007 Census of Governments. Each of the 36,000 special district governments designated for the census will be sent an appropriate form.

Respondents will be asked to verify or correct the name and mailing address of the government, answer the questions on the form, and return the form. The 2007 Census of Governments Local Government Directory Survey consists of two basic content areas: government organization and government employment. For government organization we will ask for authorizing legislation, composition of governing body, services provided, Web address, and corrections to the name and address of the government. For government employment we will ask for full-time employees, part-time employees, and annual payroll.

A census of governments is taken at 5-year intervals as required by law under Title 13, United States Code. This form will be used for the following purposes: (1) To produce the official count of state and local government units in the United States; (2) to obtain descriptive information on the basic characteristics of governments; (3) to identify and delete inactive units; (4) to identify file duplicates and units that were dependent on other governments; and (5) to update and verify the mailing addresses of governments.

Affected Public: State, local, or Tribal governments.

Frequency: Every 5 years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 161.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 1, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8780 Filed 6–6–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Economic Census Covering Utilities; Transportation and Warehousing; Finance and Insurance; and Real Estate and Rental and Leasing Sectors.

Form Number(s): The 36 report forms covered by this request are too numerous to list here.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 951,328 hours.

Number of Respondents: 787,577.

Avg. Hours Per Response: One and one half hours.

Needs and Uses: The 2007 Economic Census covering the Utilities; Transportation and Warehousing; Finance and Insurance; and Real Estate and Rental and Leasing sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 1,230,000 establishments in these sectors of the economy as classified in the North American Industry Classification System (NAICS). The Utilities sector comprises establishments primarily engaged in the provision of utility services through a permanent infrastructure. The Transportation sector comprises establishments primarily engaged in transporting people and goods. The Warehousing sector comprises establishments primarily engaged in the warehousing and storage of goods. The Finance and Insurance sector comprises two types of establishments: Those engaged in financial transactions, that is, transactions involving the creation, liquidation, or change in ownership of financial assets, or in facilitating financial transactions; and those engaged in the intermediating as the consequence of pooling risks and facilitating such intermediation. The Real Estate subsector comprises establishments primarily engaged in leasing real estate to others, as well as real estate managers, agents, and brokers. The Rental and Leasing subsector comprises establishments primarily engaged in acquiring, owning, and making available a wide variety of tangible goods such as machinery, equipment, computers, and consumer goods to businesses or individuals, in return for a periodic rental or lease payment. The economic census will produce basic statistics by kind of business on number of establishments, revenue, payroll, and employment. It also will yield a variety of subject statistics, including revenue by product line, and other industry-specific measures, such as insurance benefits paid to policyholders, exported services, purchased transportation, and exported energy. Basic statistics will be summarized for the United States, states, metropolitan areas and, in some cases, for counties and places having 2,500 inhabitants or more. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an

important part of the framework for the national income and product accounts, input-output tables, economic indices, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census were not conducted, the Federal Government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making, planning, and program administration.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; State, local, or Tribal governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 1, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–8781 Filed 6–6–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–18]

In the Matter of: Swiss Telecom, 777 Bay the Wicket, P.O. Box 46070, Toronto, ON M5G 2P6, Respondent; Decision and Order

On November 22, 2005, the Bureau of Industry and Security (''BIS'' issued a charging letter alleging that Respondent, Swiss Telecom, committed nine violations of the Export Administration Regulations (Regulations).[1] The Regulations were issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the Act).[2]

Specifically, the charging letter alleged that Swiss Telecom conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations, namely the export of telecommunications devices to Iran without the required licenses. BIS alleged that the goal of the conspiracy was to obtain telecommunications devices, including devices manufactured by a U.S. company, including an Adit 600 Chassis, FXO Channel Cards, and ABI FXO Ports (ECCN 5A991),[3] items subject to both the Regulations and the Iranian Transactions Regulations[4] of the Treasury Department's Office of Foreign Assets Control (OFAC), on behalf of an Iranian end-user and to export those telecommunications devices to Iran. In doing so, BIS charged that Swiss Telecom committed a violation of § 764.2(d) of the Regulations.

The charging letter filed by BIS also alleged that, on or about December 17, 2001, and on or about March 7, 2002, Swiss Telecom caused, aided or abetted the doing of an act that was prohibited by the Regulations. Specifically, BIS alleged that Swiss Telecom ordered the aforementioned telecommunications devices from a U.S. company for a project in Iran and told the U.S. company to export the items through the United Arab Emirates (UAE) to Iran. The U.S. company then exported the devices through the UAE to Iran. These transactions were subject to the Iranian Transactions Regulations, and were done without authorization from OFAC as required by § 746.7 of the Regulations. BIS charged that Swiss Telecom committed two violations of § 764.2(b) of the Regulations.

In addition, the BIS charging letter alleged that in connection with the two aforementioned transactions, Swiss Telecom ordered the telecommunications devices for a project in Iran with knowledge that they would be exported from the United States to Iran, via the UAE, without authorization from OFAC. In doing so, BIS charges that two violations of § 764.2(e) of the Regulations were committed.

Finally, the BIS charging letter alleged that on four occasions between on or about September 14, 2001, and on or about March 19, 2002, Swiss Telecom caused the doing of an act prohibited by the Regulations by causing the export of technical information subject to the Regulations (ECCN 5E991) from a U.S. company to Iran. Specifically, BIS alleged that a Swiss Telecom employee caused a U.S. company to provide Swiss Telecom with technical data and customer support assistance for equipment in Iran, via telephone, e-mail and telnet. These transactions were subject to the Iranian Transactions Regulations, and were done without authorization from OFAC as required by § 746.7 of the Regulations. This activity was the basis for four charges under § 764.2(b) of the Regulations.

In accordance with § 766.3(b)(1) of the Regulations, on November 22, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to

[1] The Regulations are currently codified at 15 C.F.R. Parts 730–774 (2006). The charged violations occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 20002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2002)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulation in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

[3] The term ''ECCN'' refers to Export Control Classification Number. *See* 15 CFR 772.1 (2006).

[4] 31 CFR Part 560 (2006).

Swiss Telecom at its last known address. BIS has established that this charging letter was received by Swiss Telecom on or about December 9, 2005. In addition, BIS mailed notice of issuance of a charging letter by registered mail to counsel for Swiss Telecom. BIS has also established that this charging letter was received by counsel for Swiss Telecom on or about December 8, 2005.

Section 766.6(a) of the Regulations provides, in pertinent part, that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter'' initiating the administrative enforcement proceeding. To date, Swiss Telecom has not filed an answer to the charging letter.

Pursuant to the default procedures set forth in § 766.7 of the Regulations, BIS filed a Motion for Default Order on April 7, 2006. Under § 766.7(a) of the Regulations, ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.'' Based upon the record before him, the ALJ held Swiss Telecom in default.

Accordingly, on May 12, 2006, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and determined that those facts established that Swiss Telecom committed one violation of § 764.2(d), six violations of § 764.2(b) and two violations of § 764.2(e) of the Regulations. The ALJ recommended a penalty of denial of Swiss Telecom's export privileges for 10 years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law with respect to each of the above-referenced charges brought against Swiss Telecom. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the importance of preventing future unauthorized exports, and the lack of any mitigating factors. Although the imposition of monetary penalties is an appropriate option, I agree with the ALJ that in this case such a penalty may not be effective, given the difficulty of collecting payment against a party outside the United States.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

Accordingly, *it is therefore ordered,*

First, that, for a period of ten years from the date this Order is published in the **Federal Register**, Swiss Telecom, 777 Bay the Wicket, P.O. Box 46070, Toronto, ON M5G 2P6, and all of its successors and assigns, and, when acting for or on behalf of Swiss Telecom, its officers, representatives, agents, and employees (''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register.**

Dated: June 1, 2006.

David H. McCormick,

Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On November 22, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), issued a charging letter initiating this administrative enforcement proceeding against Swiss Telecom. The charging letter alleged that Swiss Telecom committed nine violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2006)) (the ''Regulations''),[1] issued under the Export Administration Act of 1979, as

[1] The charged violations occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2002)). The 2006 Regulations establish the procedures that apply to this matter.

amended (50 U.S.C. App 2401–2420 (2000)) (the ''Act'').[2]

Specifically, the charging letter alleged that Swiss Telecom conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations, namely the export of telecommunications devices to Iran without the required licenses. BIS alleged that the goal of the conspiracy was to obtain telecommunications devices, including devices manufactured by a U.S. company, including an Adit 600 Chassis, FXO Channel Cards, and ABI FXO Ports (ECCN 5A991[3]), items subject to both the Regulations and the Iranian Transactions Regulations[4] of the Treasury Department's Office of Foreign Assets Control (OFAC), on behalf of an Iranian end-user and to export those telecommunications devices to Iran. (Charge 1).

The charging letter filed by BIS also alleged that, on or about December 17, 2001, and on or about March 7, 2002, Swiss Telecom caused, aided or abetted the doing of an act that was prohibited by the Regulations. Specifically, BIS alleged that Swiss Telecom ordered the aforementioned telecommunications devices from a U.S. company for a project in Iran and told the U.S. company to export the items through the United Arab Emirates (UAE) to Iran. The U.S. company then exported the devices through the UAE to Iran. These transactions were subject to the Iranian Transactions Regulations, and were done without authorization from OFAC as required by Section 746.7 of the Regulations. (Charges 2 and 3).

In addition, the BIS charging letter alleged that in connection with the two aforementioned transactions, Swiss Telecom ordered the telecommunications devices for a project in Iran with knowledge that they would be exported from the United States to Iran, via the UAE without authorization from OFAC. (Charges 4 and 5).

Finally, the BIS charging letter alleged that on four occasions between on or about September 14, 2001, and or about March 19, 2002, Swiss Telecom caused the doing of an act prohibited by the Regulations by causing the export of technical information subject to the Regulations (ECCN 5E991) from a U.S. company to Iran. Specifically, BIS alleged that a Swiss Telecom employee caused a U.S. company to provide Swiss Telecom with technical data and customer support assistance for equipment in Iran, via telephone, email and telnet. These transactions were subject to the Iranian Transactions Regulations, and were done without authorization from OFAC as required by § 746.7 of the Regulations. (Charges 6, 7, 8, and 9).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last address. In accordance with the Regulations, on November 22, 2005, BIS mailed the notice of issuance of a charging letter by registered mail to Swiss Telecom at its last known address: Swiss Telecom, 777 Bay The Wicket, P.O. Box 46070, Toronto, Ontario M5G 2P6. In addition, BIS mailed the notice of issuance of a charging letter by registered mail to counsel for Swiss Telecom, Mr. Kenneth H. Page, Page Arnold LLP, Suite 2200, 439 University Avenue, Toronto, Ontario, M5G 1Y8. BIS has submitted evidence that establishes that this charging letter was received by Swiss Telecom on or about December 9, 2005. BIS has also submitted evidence that establishes that this charging letter was received by Mr. Arnold Page on or about December 8, 2005.

Section 766.6(a) of the Regulations provides, in pertinent part, that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter'' initiating the administrative enforcement proceeding. To date, Swiss Telecom has not filed an answer to the charging letter.

Pursuant to the default procedures set forth in § 766.7 of the Regulations, I find the facts to be as alleged in the charging letter, and hereby determine that those facts establish that Swiss Telecom committed one violation of § 764.2(d), six violations of § 764.2(b), and two violations of § 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. *See* 15 CFR § 764.3 (2001–2002). Because Swiss Telecom knowingly violated the Regulations by causing the export of technical information subject to the Regulations and by ordering telecommunications devices for delivery to Iran, with knowledge that a violation of the Regulations would occur, BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security[5] that Swiss Telecom's export privileges be denied for ten years.

BIS has suggested these sanctions because Swiss Telecom's knowing violation in causing the export of controlled technical information and telecommunications devices for delivery to Iran without prior authorization evidences a serious disregard for U.S. export control laws. Furthermore, BIS has noted that Iran is a country that the United States has designated as a state-sponsor of international terrorism. In addition, BIS believes that the imposition of a civil penalty in this case may be ineffective, given the difficulty of collecting payment against a party outside of the United States. In light of these circumstances, BIS believes that the denial of Swiss Telecom's export privileges for ten years is an appropriate sanction.

On this basis, I concur with BIS and recommend that the Under Secretary of Commerce for Industry and Security enter an Order denying Swiss Telecom's export privileges for a period of ten years. Such a denial order is consistent with penalties imposed in past cases under the Regulations involving shipments to Iran. *See In the Matter of Petrom GmBH International Trade,* 70 FR 32743 (June 6, 2005) (affirming the recommendations of the Administrative Law Judge that a twenty year denial order and a civil monetary sanction of $143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); *In the Matter of Arian Transportvermittlungs, GmbH,* 69 FR 28120 (May 18, 2004) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved a shipment

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which was extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–06 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (34 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273 (Aug. 5, 2005)), has continued the Regulations in effect under IEEPA.

[3] The term ''ECCN'' refers to Export Control Classification Number. *See* 15 CFR 772.1 (2006).

[4] 31 CFR Part 560 (2006).

[5] Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

of a controlled item to Iran); *In the Matter of Jabal Damavand General Trading Company,* 67 FR 32009 (May 13, 2002) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran); *In the Matter of Adbulamir Mahdi,* 68 FR 57406 (Oct. 3, 2003) (affirming the recommendation of the Administrative Law Judge that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran). A ten year denial of Swiss Telecom's export privileges is warranted because Swiss Telecom's violations, like those of the defendants in the above-cited case, were deliberate acts done in violation of U.S. export control laws.

The terms of the denial of export privileges against Swiss Telecom should be consistent with the standard language used by BIS in such orders. The language is:

Recommended Order—[Redacted]

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register.**

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, and vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated; May 12, 2006.

The Honorable Joseph N. Ingolia,

Chief Administrative Law Judge.

[FR Doc. 06–5142 Filed 6–6–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) is conducting new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC) in response to requests from Shanghai Taiside Trading Co., Ltd. (Taiside) and Wuhan Shino–Food Trade Co., Ltd. (Shino–Food). The period of review (POR) is December 1, 2004, through May 31, 2005. We have preliminarily determined that the new shipper review for Shino–Food should be rescinded because the sale made by Shino–Food was not *bona fide*, and we have preliminarily determined that the sale made by Taiside is *bona fide* and that the sale has been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 20 and June 24, 2005, respectively, the Department received properly filed requests for a new shipper review, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(b) and (c), from Taiside and Shino–Food under the antidumping duty order on honey from the PRC. The Department determined that the requests met the requirements stipulated in 19 CFR 351.214, and on August 5, 2005, published its initiation of these new shipper reviews. *Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 70 FR 45367 (August 5, 2005). On August 5, 2005, the Department issued antidumping duty new shipper questionnaires to Taiside and Shino–Food. Between September 2005 and February 2006, the Department received timely filed original and supplemental questionnaire responses from Taiside and Shino–Food.

On October 14, 2005, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential surrogate countries and to submit publicly available information to value the factors of production. On January 10, 2006, we extended the deadline on which to submit publicly available information to value the factors of production. On February 17, 2006, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) submitted comments on surrogate information with which to value the factors of production in this proceeding.

On January 13, 2006, the Department extended the deadline for the preliminary results to March 31, 2006. *Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2004/2005 New Shipper Review*, 71 FR 2182 (January 13, 2006). On March 9, 2006, the Department further extended the deadline for the preliminary results to May 22, 2006. *Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2004/2005 New Shipper Review*, 71 FR 12178 (March 9, 2006). On May 19, 2006, the Department fully extended the deadline for the preliminary results to May 30, 2006. *See Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2004/2005 New Shipper Review*, 71 FR 29123 (May 19, 2006).

From February 27 through March 1, 2006, the Department conducted verification of Taiside's questionnaire responses at the company's facilities in Shanghai, PRC. From March 17 through 19, 2006, the Department conducted verification of Shino–Food's questionnaire responses at the company's facilities in Wuhan, PRC.

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Act and 19 CFR 351.307(b)(iv), we conducted verification of the

questionnaire responses of Taiside and Shino–Food in February and March 2006, respectively. We used standard verification procedures, including on–site inspections of the production facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports, public versions of which are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building. *See* ''Memorandum to the File: Verification of the Sales and Factors Response of Shanghai Taiside Trading Co., Ltd. in the Antidumping Duty New Shipper Review on Honey from the People's Republic of China,'' dated May 30, 2006 (Taiside Verification Report); *see also* ''Memorandum to the File: Verification of the Sales and Factors Response of Wuhan Shino–Food Trade Co., Ltd. in the Antidumping Duty New Shipper Review on Honey from the People's Republic of China,'' dated May 30, 2006.

New Shipper Status

Consistent with our practice, we investigated whether the sales made by Taiside and Shino–Food for these new shipper reviews were *bona fide*. *See, e.g., Notice of Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 70 FR 59031 (October 11, 2005). For Taiside, we found no evidence that the sale in question is not a *bona fide* sale. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Taiside, and our verification thereof, we preliminarily determine that Taiside has met the requirements to qualify as a new shipper during the POR. *See* ''Memorandum to James C. Doyle, Office Director: Seventh Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China: *bona fide* Analysis of Shanghai Taiside Trading Co., Ltd.,'' dated May 30, 2006. We have determined that Taiside made its first sale and/or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these preliminary results of review, we are treating Taiside's sale of honey to the United States as an appropriate transaction for a new shipper review. *See* ''Separate Rates'' section below.

However, for Shino–Food, we found evidence that the sale in question is not a *bona fide* sale. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Shino–Food, and our verification thereof, we preliminarily determine that Shino–Food has not met the requirements to qualify for a new shipper review during the POR. *See* ''Memorandum to James C. Doyle, Office Director: *bona fides* Analysis and Intent to Rescind New Shipper Review of Honey from the People's Republic of China for Wuhan Shino–Food Trade Co., Ltd.,'' dated May 30, 2006 (Shino–Food *bona fides* Analysis Memorandum), a public version of which is on file in the CRU. *See* ''Preliminary Intent to Rescind'' below.

Preliminary Intent to Rescind

Concurrent with this notice, we are issuing a memorandum[1] detailing our analysis of the *bona fides* of Shino–Food's U.S. sales and our preliminary decision to rescind the new shipper review with respect to Shino–Food based on the totality of the circumstances of its sale. Although much of the information relied upon by the Department to analyze the issues is business proprietary, the Department based its determination that the new shipper sale made by Shino–Food was not *bona fide* on the following: (1) the difference in the sales price of Shino–Food's single POR sale as compared to the sales price of its subsequent sales; (2) the quantity of its single POR sale as compared to subsequent sales; (3) information regarding the payment of Shino–Food's freight and antidumping cash deposit for its single sale during the POR; and (4) other indicia of a non–*bona fide* transaction.

Because the Department has found Shino–Food's single POR sale to be non–*bona fide*, it is not subject to review. Therefore, the Department intends to rescind this review because Shino–Food has no reviewable sales during the POR. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (''{P}ursuant to the rulings of the Court, Commerce may exclude sales from the export price calculation where it finds that they are not *bona fide*'').

Separate Rates

In proceedings involving non–market economy (NME) countries (*see* section 771(18) of the Act), the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. For its new shipper review, Taiside submitted information in support of its claim for a company–specific rate. Moreover, we examined Taiside's clam for a separate rate at verification.

Accordingly, we have considered whether Taiside is independent from government control, and therefore eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61756 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61278 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), and accompanying Issue and Decision memorandum at Comment 1 (*Sparklers*), as affirmed by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–7 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto government control over export activities.

Taiside provided complete separate–rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether this producer/exporter is independent from government control.

[1] *See* Shino-Food *bona fides* Analysis Memorandum.

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, and accompanying Issue and Decision memorandum at Comment 1. As discussed below, our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of government control for Taiside based on each of these factors.

Taiside:

Taiside has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Company Law of the People's Republic of China'' (December 29, 1993) and the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994). *See* Exhibit A–2 of Taiside's September 2, 2005, submission (Taiside Section A). Taiside also submitted a copy of its business license in Exhibit A–3 of Taiside Section A. The Shanghai Industry & Commerce Administration Bureau issued this license. Taiside explains that its business license defines the scope of the company's business activities and ensures the company has sufficient capital to continue its business operations. Taiside states that its license is issued solely and directly to Taiside and no other company can use the business license that Taiside uses. Taiside adds that its license defines the business activities that Taiside engages in and entitles it to produce and sell honey and honey products, among others. There are no other limitations or entitlements posed by the business license, according to Taiside. Further, Taiside states that a business entity must obtain a license before it legally operates.

We note that Taiside states that it is governed by the *Company Law*, which it claims governs the establishment of limited liability companies and provides that such a company shall operate independently and be responsible for its own profits and losses. Taiside also placed on the record the *Foreign Trade Law*, stating that this law allows them full autonomy from the central authority in governing its business operations. We have reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states, ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' As in prior cases, we have analyzed such PRC laws and found that they establish an absence of de jure control. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and *Preliminary Results of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001), as affirmed in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of de jure control over the export activities of Taiside.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *Id.* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates.

Taiside has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to sign export contracts; (4) the shareholders appointed the general manager, who selected the other managers, and Taiside does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) the shareholders decide how profits will be used. *See* Taiside's September 2, 2005, Section A questionnaire response. We have examined the documentation provided and note that it does not demonstrate that pricing is coordinated among exporters of PRC honey.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Taiside's export activities, we preliminarily determine that Taiside has met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether Taiside's sales of honey to the United States were made at prices below normal value (NV), we compared its United States price to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

For Taiside, we based U.S. price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. For Taiside we deducted foreign inland freight and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Where foreign inland freight and foreign brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion). For those expenses that were provided by a market–economy provider and paid for in market–economy currency, we used the reported expense, pursuant to 19 CFR 351.408(c)(1).

Normal Value

Non–Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2001–2002 Administrative*

Review and Partial Rescission of Review, 68 FR 7500 (February 14, 2003), as affirmed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). None of the parties to these reviews have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market–economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the ''Memorandum from the Office of Policy to Carrie Blozy,'' dated October 14, 2005.[2] In addition, based on publicly available information placed on the record (*e.g.*, world production data), India is a significant producer of honey. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate–country selection. See ''Memorandum to the File: Selection of a Surrogate Country,'' dated May 30, 2006, (Surrogate Country Memo).

Application of Adverse Facts Available

The Department's August 5, 2005, questionnaire and its November 15, 2005, and January 13, 2006, supplemental questionnaires requested that Taiside report all packing inputs. At verification, the Department found that Taiside had not reported in its responses that it used staples and paperboard inserts during the POR. *See* Taiside Verification Report. The company did not give the Department information on these inputs at verification.

Section 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in the reaching the applicable determination if: 1) the necessary information is not available on the record; or, 2) an interested party or any other person (A) Withholds information that has been requested by the administering authority under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

The Department finds that the application of facts otherwise available is warranted under sections 776(a)(2)(A) and (B) of the Act because Taiside withheld certain factors information for the POR from its responses and failed to provide the factors information by the deadlines for submission of the information.

Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability. *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53809–53810 (October 16, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Accordingly, adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870, (1994). Furthermore, ''affirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

The Department preliminarily finds that an adverse inference is warranted due to Taiside's failure to put forth its maximum efforts to fully and accurately report consumption of inputs related to the manufacturing of honey during the POR. The information with respect to these packing inputs was in the sole possession of Taiside. The Department asked questions on the reporting of Taiside's packing inputs in its November 15, 2005, and January 13, 2006, supplemental questionnaires. These two inputs are critical to the calculation of an accurate dumping margin because they relate directly to the normal value of the subject honey sold during the POR, as section 773(c)(1)(B) of the Act requires the Department to include ''the cost of containers, coverings, and other expenses.'' However, Taiside did not provide the information, even though Taiside had this information in its sole possession. Therefore, the Department finds that Taiside failed to act to the best of its ability in reporting its factors data. Consistent with the Department's practice in other cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Taiside's two unreported packing inputs, discovered during verification. *See* Taiside Verification Report at 11.

Therefore, for these preliminary results, as partial AFA and based on the approximate additional consumption of staples and paperboard, the Department will double the reported usage rates of carton and tape--those inputs on the record that mimic the functions of the unreported packing inputs of staples and paperboard inserts--to account for the additional unreported packing materials. *See* ''Factors of Production'' section below.

Factors of Production

In accordance with section 773(c)(3) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used factors of production reported by the producer or exporter for materials, energy, labor, and packing, except as indicated. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

For Taiside, based on information obtained at verification, for these preliminary results the Department will apply partial adverse facts available to the calculation of the usage rates for two unreported packing inputs. *See* ''Application of Adverse Facts Available,'' section above.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and

[2] This memorandum is attached to the letters sent to interested parties to this proceeding requesting comments on surrogate country and surrogate value information, dated October 14, 2005.

accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data reported in the *Monthly Statistics of the Foreign Trade of India* (Indian Import Statistics), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from *World Trade Atlas (see* http://www.gtis.com/wta.htm) to value inputs sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non–industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in the Department's final determination, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004). See ''Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results of New Shipper Administrative Reviews of Honey from the People's Republic of China,'' dated May 30, 2006 (Factor Valuation Memo), for a complete discussion of the import data that we excluded from our calculation of surrogate values. This memorandum is on file in the CRU.

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration Web site (*http://trade.gov/ia/*). *See* Factor Valuation Memo.

We valued the factors of production as follows:

To value raw honey, we first calculated a weighted average of the raw honey prices for each month from December 2002 through June 2003, based on the percentage of each type of honey produced and sold, as derived from EDA Rural Systems Pvt Ltd.'s Web site, *http://www.litchihoney.com* (EDA data), and as submitted by petitioners in their February 17, 2006, submission at exhibit 2. Next we inflated the EDA data to 2004 using the WPI. Then, to ensure that the EDA data reflects a POR contemporaneous price, the Department adjusted the WPI–inflated EDA value for significant price decreases in the Indian honey market in 2005 as evidenced in the article titled ''Nosedive as supply exceeds demand'' (Nosedive article), which was published in the *India Financial Express* in January 2006.

Because the above–referenced article did not specify monthly decreases in 2005, the Department took the average 2005 annual decrease and divided by twelve to approximate monthly decreases for all of 2005. Because there is no available information regarding the decline in 2005 prices attributed to any one month, we preliminarily find that it is most reasonable to assume a steady, monthly price decline in 2005. This monthly price decline was then applied, successively, to each of the five months of the POR in 2005, using the 2004 inflated EDA data as the base value. No adjustment was made to the December 2004 value, which is based solely on the inflated EDA data. Finally, we calculated an average of monthly prices, resulting in the POR raw honey surrogate value.

In selecting the raw honey values from the EDA data as the best available information with which to value raw honey in this proceeding, we note that the Department conducted extensive research on potential raw honey surrogate values for this new shipper review. The relevant research is included as Attachment 18 of the Factor Valuation Memo. In analyzing these data, the Department found substantial evidence that the raw honey values in India for the year 2005 declined significantly from previous years and that such decline was not reflected in the WPI adjustment. As outlined in the Factor Valuation Memo, though, the Department does not find the news articles to be as reliable or as veracious as the EDA data. The Department has determined that the comprehensiveness of the Nosedive article, which details three years of prices in three large honey–producing states in India, including prices for some of the same flower types represented in the EDA data, is a reliable source to adjust the EDA data to reflect raw honey prices in India and contemporaneous to the instant POR. For a detailed discussion of this issue, *see* Factor Valuation Memo.

To value steam, the Department followed the methodology used in the investigation of certain tissue paper products and certain crepe paper products from the PRC. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407 (September 21, 2004), as affirmed in the final determination, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005). Using publicly available sources, the Department calculated a value for steam by: 1) Finding an Indian natural gas price; 2) calculating the ratio of steam volume to natural gas volume; 3) applying this ratio to the surrogate value of Indian natural gas to obtain a value for steam in USD in thousands of cubic feet; 4) converting the USD in thousands of cubic feet value of steam into USD/kg using a publicly available conversion factor; and 5) adjusting the calculated value for inflation by applying the appropriate WPI inflator. *See* Factor Valuation Memo.

To value water, we calculated the average price of all industrial water rates from various regions as reported by the Maharashtra Industrial Development Corporation, *http://midcindia.org*, dated June 1, 2003. We inflated the value for

water using the POR–average WPI rate. *See* Factor Valuation Memo.

We valued electricity using the 2000 electricity price in India reported by the International Energy Agency statistics for *Energy Prices & Taxes, Second Quarter 2003*. We inflated the value for electricity using the POR–average WPI rate. *See* Factor Valuation Memo.

To value beeswax, plastic bottles, plastic caps, printed labels, cartons, plastic tape, man–made pallets, and plastic film, we used Indian Import Statistics, contemporaneous with the POR, removing data from certain countries as discussed in the Factor Valuation Memo. We also adjusted the surrogate values to include freight costs incurred between the shorter of the two reported distances from either: (1) the closest PRC seaport to the location producing the subject merchandise, or (2) the PRC domestic materials supplier to the location where the subject merchandise is produced. *See* Factor Valuation Memo.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly available information in the 2004–2005 annual report of Mahabaleshwar Honey Production Cooperative Society Ltd. (MHPC), a producer of the subject merchandise in India, upon which petitioners argued that the Department should rely. We are continuing to calculate SG&A based on the MHPC data as consistent with *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873, 38875 (July 6, 2005). In addition, we have reclassified employee benefit expenses as overhead expenses in the financial ratios calculation, consistent with the recent determination in *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision memorandum at Comment 1B. *See* Factor Valuation Memo.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its Web site, *http://ia.ita.doc.gov/wages/*. *See* Factor Valuation Memo.

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from *http://www.infreight.com*, an Indian inland freight logistics resource website. See Factor Valuation Memo.

To value brokerage and handling, we used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s (Essar) February 28, 2005, Section C submission in the antidumping duty review of certain hot–rolled carbon steel flat products from India, and information from Agro Dutch Industries Ltd.'s (Agro Dutch) May 25, 2005, Section C submission, taken from the administrative review of preserved mushrooms from India, for which the POR was February 1, 2004, through January 31, 2005. *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision memo at Comment 6; and *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006).

Since the reported rate in Agro Dutch is contemporaneous with the POR, no adjustments to the value were necessary. However, as the Essar rate covers the period December 1, 2003, through November 30, 2004, we adjusted this rate for inflation using the POR wholesale WPI for India. *See* Factor Valuation Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this new shipper review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Exporter	Margin (percent)
Shanghai Taiside Trading Co., Ltd.	39.69%

For details on the calculation of the antidumping duty weighted–average margin for Taiside, see Taiside's analysis memorandum for the preliminary results of the seventh new shipper review of the antidumping duty order on honey from the PRC, dated May 30, 2006. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, where possible, we calculated an importer–specific assessment rate for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. If these preliminary results are adopted in our final results of review, we will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirement will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act. For subject merchandise exported by Taiside, we will establish a per–kilogram cash deposit rate that will be equivalent to the company–specific cash deposit established in this review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday

thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party must limit its presentation only to arguments raised in its briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results or final rescissions of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification

At the completion of the new shipper review of Shino–Food, either with a final rescission or a notice of final results, the Department will notify the CBP that bonding is no longer permitted to fulfill security requirements for shipments by the exporter/producer combination of Shino–Food for honey from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication of the final rescission or results notice in the **Federal Register**. If a final rescission notice is published, a cash deposit of 183.80 percent *ad valorem* shall be collected for any entries exported/produced by Shino–Food. Should the Department reach a final result other than a rescission, an appropriate antidumping duty rate will be calculated for both assessment and cash deposit purposes.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8858 Filed 6–6–06; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda, Priorities and Strategic Plan; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2008, which begins October 1, 2007, and about its current strategic plan, to be revised for submission to Congress September 30, 2006, pursuant to the Government Performance and Results Act (GPRA). Because of resource limitations, staff is proposing to delete the ''Keeping Children Safe from Drowning'' goal in the current 2003 Strategic Plan, but will continue activities at the project level. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2008 and the strategic plan will become part of the public record.

DATES: The hearing will begin at 10 a.m. on July 11, 2006. Written comments, requests from members of the public desiring to make oral presentations, and the written text of any oral presentations must be received by the Office of the Secretary not later than June 27, 2006.

ADDRESSES: The hearing will be in room 420 of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned ''Agenda, Priorities and Strategic Plan'' and e-mailed to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, no later than June 27, 2006.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the current strategic plan or to request an opportunity to make an oral presentation, e-mail, call or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cpsc-os@cpsc.gov;* telephone (301) 504–7923; facsimile (301) 504–0127. An electronic copy of the annotated 2003 Strategic Plan can be found at *http://www.cpsc.gov/cpscpub/pubs/reports/2003strategicAnnotated.pdf.*

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission conduct a public hearing and provide an opportunity for the submission of comments. In addition section 306(d) of the Government Performance and Results Act (GPRA) (5 U.S.C. 306(d)) requires the Commission to seek comments from interested parties as part of the process of revising the current CPSC strategic plan. The strategic plan is a GPRA requirement. The revised plan will provide an overall guide to the formulation of future agency actions and budget requests. Because of resource limitations, staff is proposing to delete the ''Keeping Children Safe from Drowning'' goal in the current, 2003 Strategic Plan. Work in this area would continue at the project level with expanded public information efforts, such as partnerships with child safety organizations, to reduce child drownings. The Commission may also consider other changes as it updates the current plan.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 2008, which begins on October 1, 2007. This budget request must reflect the contents of the agency's strategic plan developed under GPRA.

The Commission will conduct a public hearing on July 11, 2006 to receive comments from the public concerning its strategic plan, and agenda and priorities for fiscal year 2008. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission administers and enforces the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety

Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA directs the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the strategic plan developed under GPRA.

Persons who desire to make oral presentations at the hearing on July 11, 2006, should e-mail, call or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, e-mail *cpsc-os@cpsc.gov,* telephone (301) 504–7923, facsimile (301) 504–0127 not later than June 27, 2006. Presentations should be limited to approximately ten minutes.

Persons desiring to make presentations must submit the text of their presentations to the Office of the Secretary not later than June 27, 2006. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on July 11, 2006, and will conclude the same day. Written comments on the Commission's current strategic plan, and agenda and priorities for fiscal year 2008, should be received in the Office of the Secretary not later than July 5, 2006. Persons who desire a hard copy of the current strategic plan may contact the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, e-mail *cpsc-os@cpsc.gov,* telephone (301) 504–7923, facsimile (301) 504–0127. An electronic copy of the annotated 2003 Strategic Plan can be found at *http://www.cpsc.gov/cpscpub/pubs/reports/2003strategicAnnotated.pdf.*

Dated: June 1, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–8764 Filed 6–6–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–HA–0014]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by July 7, 2006.

Title, Form Number, and OMB Number: DoD Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0022.

Type of Request: Extension.

Number of Respondents: 885,000.

Responses Per Respondent: 1.

Annual Responses: 885,000.

Average Burden Per Response: 3 minutes.

Annual Burden Hours: 44,250.

Needs and Uses: The information collection requirement is necessary to obtained and record the dental health status of members of the Armed Forces. This form enables civilian dentists to record the results of their examination findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental health status of their members.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of the Management and Budget, DoD Health Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submission available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5166 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0128]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by July 7, 2006.

Title, Form and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 242, Contract Administration, related clauses in DFARS 252, and related forms in DFARS 253; DD Forms 1659; OMB Control Number 0704–0250.

Type of Request: Extension.

Number of Respondents: 15,049.

Responses Per Respondent: Approximately 7.

Annual Responses: 105,748.

Average Burden Per Response: Approximately 3 hours.

Annual Burden Hours: 276,773.

Needs and Uses: DoD needs this information to perform contract administration functions. The contracting officer uses the information to determine if contractors' Material Management and Accounting Systems conform to DoD standards.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management

and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5167 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2006–OS–0109]

Proposed Collection; Comment Request

AGENCY: Department of Defense, Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Base Assessment.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Base Assessment announces the extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 7, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitted commets.

• Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Base Assessment, ATTN: Ms. Dawn Vehmeier, 3015 Defense Pentagon, Washington, DC 20301–3014, or call Industrial Base Assessment, at (703) 602–4322.

Title, Associated Form; and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Number 0704–0377.

Needs and Uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The Industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions. Such data is essential to the Department of Defense for peacetime and wartime industrial base planning. All DD Form 2737 data submitted to the Department of Defense, Military Services or Defense Agencies are treated as Proprietary Company Confidential information and protected from release to other parties.

Affected Public: Business or other for-profit.

Annual Burden Hours: 12,800.

Number of Respondents: 153,600.

Responses Per Respondent: 1.

Average Burden Per Response: 12 hours.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are industry professionals who provide information to the requesting DoD agency on the industrial capabilities associated with the subject facility being reviewed. The DoD agencies were directed to solicit only those data elements within this form necessary to conduct the particular planning or assessment task at hand. This approach is used to minimize the burden for data requests on industry and limit the retention of in-house data to that essential to supporting defense decisions and plans. A significant portion of this information will be collected electronically and, with appropriate measures to protect sensitive data, will be made available to authorized users in the Department to support a wide variety of industrial capability analyses. These analyses are used to support cost effective acquisition of defense systems and key troop support/consumable items, assess the implications of changes in defense spending on industry, development of responsive logistics support efforts, and industrial preparedness planning and readiness analyses. The lack of accurate, current and relevant industry capability information will adversely impact the integrity of the Department's decisions and planning efforts.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5168 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0003]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by July 7, 2006.

Title, Form, and OMB Number: DoD Statement of Intent; AMC Form 207; OMB Control Number 0701–0137.

Type of Request: Revision.

Number of Respondents: 15.

Responses Per Respondents: 1.

Annual Responses: 15.

Average Burden Per Response: 20 hours.

Annual Burden Hours: 300 hours.

Needs and Uses: AMC Form 207 is used to acquire information needed to make a determination if the commercial air carriers can support the Department of Defense. Information is evaluated and used in the approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carrier service to the Department of Defense.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaing Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submission available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5164 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0004]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by July 7, 2006.

Title, Form and OMB Number: United States Air Force Academy Candidate Writing Sample; USAFA Form O–878; OMB Control Number 0701–0147.

Type of Request: Extension.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Annual Responses: 4,100.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 4,100.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5165 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0016]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces the extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 7, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Operations & Plans Officer Mortuary Affairs and Casualty Support Division, PERSCOM, (ATTN: Mr. Harold Campbell), 200 Stovall Street, Hoffman I, Alexandria, VA 22332–0300, or call the Department of the Army Reprots Clearance Officer at 703–428–6440.

Title, Form Number, and OMB Number: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Interment Expense; DD Forms 2065 and 1375; OMB Number 0704–0030.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral\interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

Annual Burden Hours: 425.

Number of Respondents: 2,450.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes (DD 2065); 10 minutes (DD 1375) minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: DD Forms 2065 and 1375 are initially prepared by military authorities and presented to the next-of-kin or sponsor to fill-in the reimbursable costs or desired disposition of remains. Without the information on these forms the government would not be able to respond to the survivor's wishes or justify its expenses in handling the deceased. Also available at government expense is transportation of the remains to a port of entry in the United States.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5169 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0015]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces the extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 7, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal; *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Total Army Personnel Command, Officer Personnel Management Directorate, ATTN: Mr. Mark Brooks, 200 Stovall Street, Alexandria, VA 22332–0314, or call the Department of the Army Reports Clearance Officer at 703–428–6440.

Title, Associated Form, and OMB Number: Application and Agreement for Establishment of a National Defense Cadet Agreement; DA Form 3126–1; OMB Control Number 0702–0110.

Needs and Uses: Educational institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply to using a DA Form 3126–1. The DA Form 3126–1 documents the agreement and becomes a contract signed by both the secondary institution and the U.S. Government. This form provides information on the school's facilities and states specific conditions if a NDCC unit is placed at the institution. The data provided on the applications is used to determine which school will be selected.

Affected Public: State, Local, or Tribal Government; Not-for-Profit Institutions.

Annual Burden Hours: 35.

Number of Respondents: 35.

Responses for Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The DA Form 3126–1 is initiated by the school desiring to host a unit and is countersigned by a representative of the Secretary of the Army. The contract is necessary to establish a mutual agreement between the secondary institution and the U.S. Government. The Commanding General, U.S. Total Army Personnel Command, is responsible for administering the JROTC program and overall policy. Region commanders are responsible for operating and administering the JROTC training conducted within the areas.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5170 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0014]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces the extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 7, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation, ATTN: Mr. Craig Hunter, 1777 N. Kent Street, Suite 8200, Arlington, VA 22209, or call the Department of the Army Reports Clearance Officer at 703–428–6440.

Title, Associated Form, and OMB Number: International Military Student Information; DD Form 2339; OMB Control Number 0702–0064.

Needs and Uses: The DD Form 2339 is required in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2339 is utilized in gathering information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individual or Households.

Annual Burden Hours: 90.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: The International Military Student Information (IMSI) is utilized by the military departments and pertains only to non U.S. citizens who are members of a foreign army that have been designated by their government to attend training at a military facility. The IMSI is utilized by the gaining organization to provide background information on the individual in order that a military and civilian sponsor may be assigned to assist the individual during his/her stay in the United States.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5171 Filed 6–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Minority Science and Engineering Improvement Program (MSEIP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.120A

Dates: Applications Available: June 7, 2006.

Deadline for Transmittal of Applications: July 24, 2006.

Deadline for Intergovernmental Review: September 20, 2006.

Eligible Applicants: The eligibility of an applicant is dependent on the type of MSEIP project. There are four types of MSEIP projects: institutional, design, special projects, and cooperative. We will not award design grants in the FY 2006 competition.

A. For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in section 361(1) and (2) of the Higher Education Act of 1965, as amended (HEA).

B. For special projects described in 34 CFR 637.14(b) and (c), eligible applicants are, in addition to those described in paragraph A, nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees and meet the requirements of section 361(3) of the HEA, and consortia of organizations that meet the requirements of section 361(4) of the HEA.

C. For cooperative projects described in 34 CFR 637.15, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: As defined in 34 CFR 637.4(b), a minority institution means an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the total enrollment.

Estimated Available Funds: $3,273,443.

Estimated Range of Awards: Institutional Project Grant: $25,000–$200,000. Special Project Grant: $25,000–$100,000. Cooperative Project Grant: $100,000–$300,000.

Estimated Number of Awards:
Institutional Project Grant: 14.
Special Project Grant: 14.
Cooperative Project Grant: 4.

Estimated Average Size of Awards: Institutional Project Grant: $120,000. Special Project Grant: $50,000. Cooperative Project Grant: $200,000.

Maximum Awards: Institutional Project Grant: $200,000. Special Project Grant: $100,000. Cooperative Project Grant: $300,000. We will not fund any application at an amount exceeding the maximum amounts specified above for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified above, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP Web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html.*

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from

allowable activities specified in section 352 of the HEA (20 U.S.C. 1067b(b)).

Competitive Preference Priorities: For FY 2006 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 5 points to an application that meets Competitive Preference Priority 1. Under 34 CFR 75.105(c)(2)(ii), we give preference to an application that meets Competitive Preference Priority 2 and Competitive Preference Priority 3 over an application of comparable merit that does not meet these priorities.

These priorities are:

Competitive Preference Priority 1. Applications from institutions that have not received a MSEIP grant within five years prior to this competition.

Competitive Preference Priority 2. Applications from previous grantees with a proven record of success.

Competitive Preference Priority 3. Applications that contribute to achieving balance among funded projects with respect to—(a) geographic region; (b) academic discipline; and (c) project type.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1. Applications that focus on the development of bridge programs that target pre-freshmen entering into science, technology, engineering, or mathematics (STEM) fields.

Invitational Priority 2. Applications that focus directly on student learning that encourage and facilitate implementation of new pedagogical approaches such as web-based course strategies or interactive course modules to increase student retention in STEM fields.

Invitational Priority 3. Applications that focus on mentoring programs designed to increase the number of underrepresented student graduates with STEM undergraduate majors.

Program Authority: 20 U.S.C. 1067–1067k.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $3,273,443.

Estimated Range of Awards: Institutional Project Grant: $25,000–$200,000. Special Project Grant: $25,000–$100,000. Cooperative Project Grant: $100,000–$300,000.

Estimated Number of Awards:

Institutional Project Grant: 14.

Special Project Grant: 14.

Cooperative Project Grant: 4.

Estimated Average Size of Awards:

Institutional Project Grant: $120,000.

Special Project Grant: $50,000.

Cooperative Project Grant: $200,000.

Maximum Awards: Institutional Project Grant: $200,000. Special Project Grant: $100,000. Cooperative Project Grant: $300,000. We will not fund any application at an amount exceeding the maximum amounts specified above for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified above, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP Web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html.*

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The eligibility of an applicant is dependent on the type of MSEIP project. There are four types of MSEIP projects: Institutional, design, special projects, and cooperative. We will not award design grants in the FY 2006 competition.

A. For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in section 361(1) and (2) of the HEA.

B. For special projects described in 34 CFR 637.14(b) and (c), eligible applicants are, in addition to those described in paragraph A, nonprofit science-oriented organizations, professional scientific societies, institutions of higher education that award baccalaureate degrees and meet the requirement of section 361(3) of the HEA, and consortia of organizations that meet the requirements of section 361(4) of the HEA. C. For cooperative projects described in 34 CFR 637.15, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: As defined in 34 CFR 637.4(b), a minority institution means an accredited college or university whose enrollment of a single minority group or combination of minority groups (as defined in 34 CFR 637.4 (b)) exceeds 50 percent of the total enrollment.

2. *Cost Sharing or Matching:* This program has no cost sharing or matching requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Ms. Carolyn Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Room 6048, Washington, DC 20006–8517. Telephone: (202) 502–7567, by fax (202) 502–7861 or by e-mail: *Carolyn.Proctor@ed.gov* or *OPE.MSEIP.ED.GOV.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package and instructions for this program. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the criteria that reviewers use to evaluate your application. We have established a mandatory page limit for the narrative portion for each type of project application. The page limits are as follows: Institutional Project Application: 40 pages. Special Projects Application: 35 pages. Cooperative Project Application: 50 pages. You must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and a document identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted

in any other font (including Times Roman and Arial Narrow) will not be accepted.

• Use not less than a 12-point font.

The page limit does not apply to the following forms required by the Department: Application for Federal Assistance (SF 424); Department of Education Supplemental Information Form for SF 424; U.S. Department of Education Budget Information for Non-Construction Programs (ED 524); ED Abstract Form; Other Attachment Form; ED GEPA 427 Form; Assurances for Non-Construction Programs (SF 424B); Grants.gov Lobbying Form (formerly Certification Regarding Lobbying (ED 80–0013)); Disclosure of Lobbying Activities (SF–LLL); Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014), and Survey on Ensuring Equal Opportunity for Applicants.

The page limit also does not apply to the program abstract or should you decide to include one, a table of contents. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III of the application) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* June 7, 2006.

Deadline for Transmittal of Applications: July 24, 2006.

Deadline for Intergovernmental Review: September 20, 2006.

Applications for grants under this program competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 20, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Minority Science and Engineering Improvement Program (MSEIP)—CFDA Number 84.120A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the MSEIP at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.grants.gov/GetStarted*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You must also provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you

upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact either of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a federal holiday, the next business day following the federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Bernadette Hence, U.S. Department of Education, 1990 K Street, NW., Room 6071, Washington, DC 20006–8513. Fax: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.120A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.120A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.120A), 550 12th Street, SW., Room 7067, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are from 34 CFR 637.32(a) through (j), and are listed below. Applicants must address each of the section criteria. The total weight of the selection criteria is 100 points; the weight of each criterion is noted in parentheses.

(a) Plan of operation (Total 15 points).

(b) Quality of key personnel (Total 5 points).

(c) Budget and cost effectiveness (Total 5 points).

(d) Evaluation plan (Total 10 points).

(e) Adequacy of resources (Total 5 points).

(f) Identification of need for the project (Total 20 points).

(g) Potential institutional impact of the project (Total 10 points).

(h) Institutional commitment to the project (Total 10 points).

(i) Expected Outcomes (Total 15 points).

(j) Scientific and educational value of the proposed project (Total 5 points).

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 75.217.

Tiebreaker for Institutional, Special Project, and Cooperative Grants. If there are insufficient funds for all applications with the same total scores, applications will receive preference in the following order: first, applications that satisfy the requirement of Competitive Preference Priority 1; second, the applications that satisfy the requirements of both Competitive Preference Priorities 2 and 3; and third, applications that satisfy the requirements of Competitive Preference Priority 2.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report including financial information as directed by the Secretary. If you receive a multi-year award, you must provide an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 34 CFR 75.720.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the MSEIP program: (1) The percentage change in the number of full-time, degree-seeking minority undergraduate students at grantee institutions enrolled in the fields of engineering or physical or biological sciences, compared to the average minority enrollment in the same fields in the three-year period immediately prior to the beginning of the current grant; (2) the percentage of minority students at grantee institutions enrolled in the fields of engineering or physical or biological sciences at the beginning of the previous school year, who are still enrolled at the same institution at the beginning of the current school year; and (3)(a) in four-year grantee institutions, the percentage of the minority students who enrolled in engineering or physical or biological sciences in the school year that was six years prior to the current school year, who graduated by the current year with a major in those fields; or (b) in two-year grantee institutions, the percentage of the minority students who enrolled in engineering or physical or biological sciences in the school year that was three years prior to the current school year, who graduated by the current year with a major in those fields, or transferred to a four-year institution.

VII. Agency Contact

For Further Information Contact: Dr. Bernadette Hence, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Room 6071, Washington, DC 20006–8517. Telephone: (202) 219–7038, by fax (202) 502–7861, or by e-mail: *Bernadette.Hence@ed.gov* or *OPE.MSEIP@ED.GOV;* or

Carolyn Proctor, Telephone: (202) 502–7567, by fax (202) 502–7861, or by e-mail: *Carolyn.Proctor@ed.gov* or *OPE.MSEIP@ED.GOV.*

If you use a telecommunication device for the deaf (TDD), you may call the Federal Relay Services (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 1, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–8751 Filed 6–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Disability and Rehabilitation Research Projects and Centers Program; Disability Rehabilitation Research Projects (DRRP)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR) on Vocational Rehabilitation: Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before July 7, 2006.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the

following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments on this notice of proposed priority in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either: (1) Awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

This notice of proposed priority is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.* Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priority

Background

Each year, many youths and young adults with blindness or other visual impairments move from secondary education to post-school settings including postsecondary education and the workplace. Unfortunately, many of these individuals may not receive the services necessary to make this transition successful. While data from the National Longitudinal Transition Study-2 (NLTS2) showed that the graduation rate for students with visual impairments was high (94 percent) and about two-thirds attended post-secondary education, individuals with visual impairments continued to have high rates of unemployment. Only 28 percent of those with blindness or low vision had worked for pay since leaving high school as compared to 70 percent of other students with disabilities (Cameto & Levine, 2005). A prior longitudinal study revealed comparable findings (Blackorby & Wagner, 1996). Among all working-age adults in the United States, between 1 to 1.7 million people, or 55 to 60 percent of individuals with visual impairments were not employed in 1994–1995 (Kirchner, Schmeidler & Todorov, 1999).

The Vocational Rehabilitation (VR) program is the primary Federal vehicle for assisting individuals with disabilities to obtain employment, including individuals with blindness or visual impairments. State VR agencies provide a variety of services, such as vocational evaluation, career guidance and counseling, mental and physical restoration, education, vocational training, job placement, rehabilitation technology, supported employment, and

transition services [1] to eligible individuals. Priority is given to serving individuals with the most significant disabilities. An individual who has a disability or is blind as determined pursuant to title II or XVI of the Social Security Act is considered to be an individual with a significant disability under the VR program and presumed to be eligible.

State VR agencies are also required to enter into interagency agreements with State educational agencies to assist in planning for the transition of students with disabilities from school to post-school activities, including the provision of vocational rehabilitation services for those individuals who are eligible for such services. Nearly 10,000 consumers with blindness or other visual impairments who exited the VR program between fiscal years 2000 and 2004 were transition-age youth between the ages of 14 and 24 when they entered the VR program (RSA 911 Case Service Report). Approximately one-third of these individuals had received services under the Individuals with Disabilities Education Act, as amended (IDEA), while in school and, therefore, were eligible to receive transition services as part of their special education program. In 2004, about 45 percent of transition-age consumers with blindness or other visual impairments exited the VR program with an employment outcome.

Early investment in VR services provided at the very beginning of a career or employment path and may result in sustained economic benefit, including reducing dependence on Social Security Administration (SSA) benefits. Approximately 22 percent of individuals with blindness or other visual impairments were receiving SSA disability benefits, including Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), at the time of their application to VR (FY 2005 RSA 911 Case Service Report). Further, transition-age consumers with blindness or other visual impairments were more likely to receive SSA benefits than other consumers with disabilities at application. Specifically, 30 percent of transition-age consumers with blindness or other visual impairments who exited the VR program in FY 2004 received SSA disability benefits as compared to 16 percent of consumers with other disability types (FY 2004 RSA 911 Case Service Report). At age 18, continued eligibility for SSA programs often hinges on the individual's inability to work. Although there have been significant efforts in recent years to reduce SSA beneficiary program related disincentives to work, we do not know the extent to which participation in these programs may continue to influence employment decisions for transition-age consumers with blindness or other visual impairments.

A recent study by Capella-McDonnall (2005) examined variables associated with successful employment outcomes for VR consumers with blindness or visual impairments. Based on analyses of the Longitudinal Study of the Vocational Rehabilitation Services Program (LSVRSP), the author concluded that there were four variables that have a significant association with competitive employment outcomes for VR consumers who are individuals with blindness or visual impairments. These variables were: (1) The receipt of education as a rehabilitation service that resulted in an educational certificate or degree; (2) having worked since the onset of the disability; (3) the reason for applying to VR related to obtaining a job; and (4) the relationship between the counselor and the consumer being rated as high quality. It should be noted these findings were based on a sample of VR individuals with blindness or other visual impairments aged 65 or younger.

A literature review by Nagle (2001) discussed factors that may influence poor post-school outcomes for youth with visual impairments and provided recommendations for improving transition practices. Nagle stated that it is necessary to know which services are the most useful in rehabilitation agencies for particular populations and then to tailor the services to the needs of the individual. The author argued that youths with visual impairments need increased opportunities for work experience through volunteer work, part-time work, paid summer employment, and increased exposure to a wider variety of employment opportunities. Students with visual impairments may be less aware of career options and often select goals that are associated with a narrow range of jobs. Nagle also suggested that youth with visual impairments need to gain transferable skills that will allow them to be competitive in a rapidly changing technological marketplace and to be encouraged to explore innovative job-seeking strategies.

The purpose of this priority is to support projects that will develop, demonstrate, and evaluate transition services and strategies that may lead to improved outcomes for transition-age individuals with blindness or other visual impairments, including outcomes in workforce participation, competitive employment, or other areas of postsecondary success.

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Nagle, K.M. (2001). Transition to employment and community life for youths with visual impairments: Current status and future directions. Journal of Visual Impairment & Blindness, 95, 725–738.

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Wolfe, K. (1997). The key to successful school-to-work programs for blind or visually impaired students. Journal of

[1] The Rehabilitation Act of 1973, as amended, defines transition services in section 7(37) as ''a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.''

Visual Impairment & Blindness, 91 (Suppl.). 5–7.

Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a DRRP on VR: Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments. Under this priority, the project must be designed to contribute to the following outcomes:

(a) Increased knowledge about factors that influence vocational rehabilitation and/or transition outcomes and contribute to the acquisition of skills that correlate with sustained competitive employment and postsecondary success for transition-age individuals with blindness or other visual impairments. The grantee must: (1) Conduct a comprehensive literature review of research in the area of VR transition services that lead to successful employment outcomes for transition-age individuals with blindness or other visual impairments; (2) conduct a preliminary analysis of the RSA 911 Case Service Report data and other appropriate data sets to identify all pertinent information related to transition services for individuals with blindness or other visual impairments; and (3) examine factors that affect employment outcomes including the types of transition services provided by VR; the types of transition services provided by special education, if any; the age of the transitioning student at the time of first contact with VR; the amount of interaction the transitioning student has with VR prior to leaving school; the relationship the transition-age individual has with the VR counselor; the transition-age individual's early employment history; the transition-age individual's dependence on SSA benefits; and the transition-age individual's socio-economic factors. In implementing item (3), the grantee must review VR case records from State VR agencies for the blind and State VR combined agencies, and interview consumers, rehabilitation professionals, teachers, postsecondary support service providers, SSA representatives, and other individuals involved in providing transition services.

(b) Improved outcomes for individuals who are blind or visually impaired. Through development, demonstration, and evaluation of intervention methods, the grantee must identify practices that support and lead to improved outcomes for transition-age individuals with blindness or other visual impairments, including outcomes in workforce participation, competitive employment, or other areas of postsecondary success. The grantee should include activities that facilitate development of skills that lead to employment (critical thinking and problem-solving skills, and personal qualities). Grantees must utilize a rigorous (*e.g.*, experimental or quasi-experimental) design.

(c) Dissemination of research findings to State VR agencies, education agencies, consumers, researchers, and other stakeholders.

(d) Coordination with projects sponsored by NIDRR, the Rehabilitation Services Administration (RSA), and the Office of Special Education Programs-sponsored projects to ensure that research conducted under this priority builds on rather than duplicates related research and to ensure effective dissemination strategies. At a minimum, the grantee must coordinate with the NIDRR Rehabilitation Research and Training Center (RRTC) on Measuring Rehabilitation Outcomes and current RSA-sponsored research on related topics (including the post-VR experiences study and the national study of transition policies and practices in State VR agencies, and other relevant projects).

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with this proposed priority are minimal while the benefits are significant.

The benefits of the DRRP have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of this proposed priority is that the establishment of a new DRRP conducting research projects will support the President's NFI and will improve the lives of persons with disabilities. This DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: June 2, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–8799 Filed 6–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to continue collecting the petroleum marketing survey forms listed below for 2007 through 2009:

EIA–14, ''Refiners'' Monthly Cost Report;''
EIA–782A, ''Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report;''
EIA–782B, ''Resellers'/Retailers' Monthly Petroleum Product Sales Report;''
EIA–782C, ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold For Local Consumption;''
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report;''
EIA–863, ''Petroleum Product Sales Identification Survey;''
EIA–877, ''Winter Heating Fuels Telephone Survey;''
EIA–878, ''Motor Gasoline Price Survey;''
EIA–888, ''On-Highway Diesel Fuel Price Survey.''

DATES: Comments must be filed by August 7, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Elizabeth Scott. To ensure receipt of the comments by due date, submission by FAX (202) 586–4913 or e-mail (*elizabeth.scott@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Elizabeth Scott can be contacted by telephone at (202) 586–1258.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Elizabeth Scott at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub L. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes and disseminates information on energy resource reserves, production, demand, technology and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

EIA's petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by the EIA on its Web site, *http://www.eia.doe.gov*, as well as in publications such as the *Monthly Energy Review, Annual Energy Review, Petroleum Marketing Monthly, Petroleum Marketing Annual, Week Petroleum Status Report, and the International Energy Outlook.* EIA also maintains a 24-hour telephone hotline number, (202) 586–6966, for the public to obtain retail price estimates for on-highway diesel fuel and motor gasoline.

II. Current Actions

EIA will be requesting a three-year extension of approval to continue collecting nine petroleum marketing surveys (Forms EIA–14, 782A, 782B, 782C, 821, 863, 877, 878, and 888) with no substantive changes to the survey forms or instructions. EIA is also interested in receiving public comments with regard to the possible modification to the EIA's petroleum marketing surveys to include an additional category for the reporting of ultra-low-sulfur diesel (ULSD) fuel (i.e., that No. 2 diesel fuel with a sulfur level no higher than 15 parts per million (ppm). The addition of ULSD would impact the Forms EIA–782A, 782B, 782C, 821, 863 and the 888.

III. Request for Comment

Prospective respondents and other interest parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average:

EIA–14, ''Refiners' Monthly Cost Report'' (1.75 hours per response);
EIA–782A, ''Refiners'/Gas Plant Operators'' Monthly Petroleum Product Sales Report'' (15 hours per response);
EIA–782B, ''Resellers'/Retailers' Monthly Petroleum Product Sales Report'' (2.5 hours per response);
EIA–782C, ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold For Local Consumption'' (2.1 hours per response);
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report'' (3.2 hours per response);
EIA–863, ''Petroleum Product Sales Identification Survey'' (1 hour per response);
EIA–877, ''Winter Heating Fuels Telephone Survey'' (.1 hour per response);
EIA–878, ''Motor Gasoline Price Survey'' (.05 hour per response);
EIA–888, ''On-Highway Diesel Fuel Price Survey'' (.05 hour per response).

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternative sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, May 31, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–8812 Filed 6–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 31, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2310–004.

Applicants: Crescent Ridge LLC.

Description: Crescent Ridge LLC submits its triennial market power analysis in compliance with Commission's order issued 8/21/02.

Filed Date: 4/11/2006.

Accession Number: 20060411–5032.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER04–1232–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its OATT intended to implement a rate change for Southwestern Public Service Co.

Filed Date: 5/16/2006.

Accession Number: 20060522–0075.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–451–002; ER06–1047–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits revisions to its OATT, revising real-time energy imbalance market proposal in compliance with the Commission's 3/1/06 order.

Filed Date: 5/19/2006.

Accession Number: 20060524–0208.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1019–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Company LLC submits an executed Distribution—Transmission Interconnection Agreement w/Cuba City Light & Water.

Filed Date: 5/19/2006.

Accession Number: 20060530–0160.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1027–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits an amendment to its 6/7/05 Wind-Up Plan filing.

Filed Date: 5/19/2006.

Accession Number: 20060530–0274.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1032–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc on behalf of Kansas Gas & Electric Co submits a notice of cancellation of its wholesale electric service agreement, Rate Schedule No. 152, with Missouri Public Service Co.

Filed Date: 5/25/2006.

Accession Number: 20060530–0037.

Comment Date: 5 p.m. Eastern Time on Thursday, June 15, 2006.

Docket Numbers: ER06–1034–000.

Applicants: ISO New England Inc.; ISO New England Power Pool Participants Committee.

Description: ISO New England Inc & New England Power Pool Participants Committee submits a limited package of clarifying & technical revisions to the market rules associated with Phase II of the Ancillary Services Market Project filed 2/6/06.

Filed Date: 5/25/2006.

Accession Number: 20060530–0036.

Comment Date: 5 p.m. Eastern Time on Thursday, June 15, 2006.

Docket Numbers: ER06–1035–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits a power purchase and sale agreement, Rate Schedule No. 229, between AEP Texas North Co and CSW Power Marketing, Inc.

Filed Date: 5/25/2006.

Accession Number: 20060530–0035.

Comment Date: 5 p.m. Eastern Time on Thursday, June 15, 2006.

Docket Numbers: ER06–1043–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an Amended and Restated Standard Large Generator Interconnection Agreement with High Prairie Wind Farm I, LLC.

Filed Date: 5/24/2006.

Accession Number: 20060530–0088.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER06–1044–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp dba Progress Energy Florida Inc submits a Notice of Cancellation of Rate Schedule 110, Contract for Purchase of Economy Energy with Duke Power Co.

Filed Date: 5/24/2006.

Accession Number: 20060530–0087.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER06–1045–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits Amendment 1 to its Participating Load Agreement with the California Department of Water Resources.

Filed Date: 5/24/2006.

Accession Number: 20060530–0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER06–1046–000.

Applicants: Western Kentucky Energy Corporation; LG&E Energy Marketing, Inc.; Louisville Gas and Electric Company; Kentucky Utilities Company.

Description: LG&E Energy Marketing Inc, Louisville Gas and Electric Co, Kentucky Utilities Company and Western Kentucky Energy Corp submits amendments to their market-based rate tariffs.

Filed Date: 5/24/2006.

Accession Number: 20060530–0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously

intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8829 Filed 6–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

June 1, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2342–009.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits a notice of change in status of transactions affecting the generating capacity subject to its control that have occurred since its last triennial market power update.

Filed Date: 5/24/2006.

Accession Number: 20060530–0090.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER01–2460–005; ER99–3151–006; ER97–837–005.

Applicants: PSEG Lawrenceburg Energy Company, LLC; PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company.

Description: PSEG Energy Resources & Trade LLC, *et al.*, submit a notice of change of status.

Filed Date: 5/26/2006.

Accession Number: 20060526–5111.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER02–2358–001.

Applicants: Visteon System, LLC.

Description: Visteon System, LLC submits an amendment to its Triennial Market Power Analysis filed 4/12/06.

Filed Date: 5/26/2006.

Accession Number: 20060526–5009.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER03–534–003.

Applicants: Ingenco Wholesale Power, L.L.C.

Description: Ingenco Wholesale Power, LLC submits a notice of non-material change in status.

Filed Date: 5/26/2006.

Accession Number: 20060526–5021.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER04–1135–001.

Applicants: Wisconsin Power & Light Company.

Description: Wisconsin Power and Light Co submits re-designated tariffs to comply with FERC Order No. 614, pursuant to the Commission's Order issued 4/26/06.

Filed Date: 5/26/2006.

Accession Number: 20060531–0048.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER05–1065–002.

Applicants: Entergy Services Inc.

Description: Entergy Services Inc, agent for Entergy Operating Companies, submits a compliance filing in accordance with FERC's 4/24/06 Order.

Filed Date: 5/24/2006.

Accession Number: 20060530–0061.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER06–740–002.

Applicants: Indeck Energy Services of Silver Springs, Inc.

Description: Indeck Energy Services of Silver Springs, Inc submits its second amended application for market-based rate authority.

Filed Date: 5/25/2006.

Accession Number: 20060601–0084.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–760–000.

Applicants: North American Energy Credit and Clearing—Risk Management, LLC.

Description: North American Energy Credit and Clearing-Risk Management, LLC submits a request for authorization to withdraw its rate application and file a new revised petition at a later date.

Filed Date: 5/24/2006.

Accession Number: 20060530–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–125–000.

Applicants: KeySpan Corporation; National Grid plc.

Description: National Grid plc et al submits an application for authorization under Section 203 of the Federal Power Act, affidavits, exhibits, & other supporting materials in connection with the merger of National Grid and KeySpan Corp.

Filed Date: 5/25/2006.

Accession Number: 20060531–0091.

Comment Date: 5 p.m. Eastern Time on Thursday, June 15, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–52–000.

Applicants: U.S, Bank Association and Goodman, James A.

Description: U.S. National Bank Association, et al submit their notice of self-certification of exempt wholesale generator status, pursuant to section 366.7.

Filed Date: 5/22/2006.

Accession Number: 20060522–5100.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: EG06–53–000.

Applicants: Signal Hill Wichita Falls Power, L.P.

Description: Signal Hill Wichita Falls Power, LP submits its notice of self-certification of exempt wholesale generator status, pursuant to section 366.7.

Filed Date: 5/26/2006.

Accession Number: 20060530–0202.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES06–49–000.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Co LLC submits its application for authorization to issue debt securities.

Filed Date: 5/19/2006.

Accession Number: 20060524–0193.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–64–000.

Applicants: Milliken & Company.

Description: Milliken & Co submits Form FERC–65B Waiver Notification pursuant to section 366.4(c)(1) of the Public Utility Holding Company Act of 2005.

Filed Date: 5/17/2006.

Accession Number: 20060517–5043.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: PH06–66–000.

Applicants: TXU Corp.

Description: TXU Corp submits its Waiver Notification pursuant to section 366.4(c)(1) of the Public Utility Holding Company Act of 2005.

Filed Date: 5/24/2006.

Accession Number: 20060523–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: PH06–67–000.

Applicants: Cleco Corporation.

Description: Cleco Corporation submits a petition for waiver of PUHCA of 2005.

Filed Date: 5/26/2006.

Accession Number: 20060526–5099.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: PH06–68–000.

Applicants: KeySpan Energy Corporation.

Description: KeySpan Energy Corporation submits a FERC Form-65A Exemption Notification pursuant to the PUHCA of 2005.

Filed Date: 5/30/2006.

Accession Number: 20060530–5016.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: PH06–69–000.

Applicants: KeySpan New England, LLC.

Description: KeySpan New England, LLC submits a FERC Form-65A Exemption Notification pursuant to the PUHCA of 2005.

Filed Date: 5/30/2006.

Accession Number: 20060530–5018.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: PH06–70–000.

Applicants: WPS Resources Corporation.

Description: WPS Resources Corp submits a Reservation of Rights re filing of Form FERC–65–B Waiver Notification pursuant to Orders 667 and 667–A.

Filed Date: 5/26/2006.

Accession Number: 20060601–0114.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8833 Filed 6–6–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2006–0446; FRL–8180–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices; EPA ICR No. 1381.07, OMB Control No. 2050–0122

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0446, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *rcra-docket@epa.gov*.
- Fax: 202–566–0272.
- Mail: Office of Solid Waste and Emergency Response (OSWER);—Resource Conservation and Recovery Act (RCRA) Docket, Environmental Protection Agency, Mailcode: 53005T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0446. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, 5306W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9037; fax number: 703–308–8686; e-mail address: *dufficy.craig@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2006–0446, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iii) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

What Information Collection Activity or ICR Does this Apply to?

Affected entities: Entities potentially affected by this action are:

SIC Code	Affected Entity
922	Local governments.
495	Sanitary services.
282	Industrial inorganic chemicals.
281	Industrial organic chemicals.
287	Miscellaneous.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices; EPA ICR No. 1381.07, OMB Control No. 2050–0122.

ICR numbers: EPA ICR No. 1381.07, OMB Control No. 2050–0122.

ICR status: This ICR is currently scheduled to expire on November 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under part 258. These owners or operators could include Federal, State, and local governments, and private waste management

companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The current ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1900.

Frequency of response: On occasion.

Estimated total annual burden hours: 191,208 hours.

Estimated total annualized Capital and Operational & Maintenance Cost Burden: 0.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another Federal Register notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 31, 2006.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. E6–8815 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0235; FRL–8070–4]

Methyl Eugenol; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product FT-methyl eugenol containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the preamble . If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) EPA–HQ–OPP–2006–0235; FRL–8070–4. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of FT-methyl eugenol, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of FT-methyl eugenol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

For manufacturing use only for formulation into end-use products for control of certain Tephriditae flies of the Order Diptera on affected food crops.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 30, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–8719 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0494; FRL–8071–1]

Rotenone; Notice of Receipt of Requests to Amend Rotenone Pesticide Registrations to Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by rotenone registrants to voluntarily amend their registrations to terminate certain uses. The requests would terminate all rotenone uses on livestock, residential and home owner use, domestic pet uses, and all other uses except for piscicide (fish kill) uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon approval of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0494, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0494. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0166; fax number: (703) 308-7070; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests dated March 7, 2006; March 17, 2006; and April 5, 2006 from the registrants Prentiss Incorporated, Foreign Domestic Chemicals Corporation, and Tifa International LLC, respectively, to terminate uses of the following rotenone products: 655-3, 655-69, 655-421, 655-422, 655-691, 655-795, 655-803, 655-804, 655-805, 655-806, 655-807, 655-808, 6458-1, 6458-5, 6458-6, 82397-1, 82397-2, 82397-3, 82397-4, and 82397-5. Rotenone is an insecticide/miticide/piscicide used to control flying and crawling insects and invasive fish. Specifically, the rotenone registrants request termination of rotenone uses including formulations for livestock use, agriculture use, residential and home owner uses, domestic pet uses, and all other uses except for piscicide uses. Foreign Domestic Chemicals Corporation conditioned their request upon the allowance for existing stocks until March 11, 2008. Upon approval of these requests, there will still be piscicide uses of rotenone allowed in the U.S.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to delete certain uses of rotenone product registrations. The affected products and the registrants making the requests are identified in Table 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the 180–day comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The rotenone registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—ROTENONE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company	Use Sites
655-3	Prentox Cube Powder	Prentiss Incorporated	The registrants have requested voluntary cancellation of the livestock use, agriculture use, residential and home owner uses, domestic pet uses, and all other uses EXCEPT for piscicide uses
655-69	Prentox Cube Resins	Do.	Do.
655-421	Prentox Synpren-Fish Toxicant	Do.	Do.
655-422	Prentox Prenfish Toxicant	Do.	Do.
655-691	Prentox Rotenone Fish Toxicant Powder.	Do.	Do.
655-795	Prentox Prenfish Grass Carp Management Bait.	Do.	Do.
655-803	Prentox Common Carp Management Bait.	Do.	Do.
655-804	Nusyn-Noxfish Fish Toxicant	Do.	Do.
655-805	Noxfish Fish Toxicant Liquid-Emulsifiable.	Do.	Do.
655-806	Cube Powder Fish Toxicant	Do.	Do.
655-807	Powdered Cube Root	Do.	Do.
655-808	Brittle Extract of Cube Root	Do.	Do.

TABLE 1.—ROTENONE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration No.	Product name	Company	Use Sites
6458-1	Cube Root Powder	Foreign Domestic Chemicals Corp..	Do.
6458-5	Rotenone Resin for Manufacturing Use Only.	Do.	Do.
6458-6	Cube Powder	Do.	Do.
82397-1	Chem Fish Regular	Tifa International, LLC.	Do.
82397-2	Chem Fish Synergized	Do.	Do.
82397-3	Powdered Cube Root	Do.	Do.
82397-4	Chem-Sect Brand Rotenone Resins	Do.	Do.
82397-5	Cube Powder Fish Toxicant	Do.	Do.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS

EPA Company No.	Company name and address
655	Prentiss Incorporated C.B. 2000 Floral Park, NY 11001
6458	Foreign Domestic Chemicals Corp.3 Post Road Oakland, NJ 07436
82397	Tifa International, LLC.50 Division Avenue Millington, NJ 07946

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Rotenone

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before July 7, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for amendments to terminate uses of rotenone, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1:

For Prentiss Incorporated products *655-3, 655-69, 655-421, 655-422, 655-691, 655-795, 655-803, 655-804, 655-805, 655-806, 655-807, 655-808* and for Tifa International LLC products *82397-1, 82397-2, 82397-3, 82397-4, 82397-5*, there will be no existing stocks provision for product in the hands of technical registrants as of the date of the final cancellation order.

For Foreign Domestic Chemical Corporation products 6458-1, 6458-5, and 6458-6, existing stocks may be distributed or sold by the registrant under the previously approved labeling until March 11, 2008.

If the request for use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 25, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–8658 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0333; FRL–8068–6]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Kresoxim-methyl in or on Vegetable, Cucurbit, Group 9

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of

regulations for residues of kresoxim-methyl in or on vegetable, cucurbit, group 9.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0333 and pesticide petition (PP) number PP 3E6594, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006 0333. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja Brothers (7505P), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 308–3194; e-mail: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180.554 for residues of kresoxim-methyl in or on cucurbits. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at

this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at*http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 3E6594. Interregional Research Project Number 4 (IR-4), 681 Highway 1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the fungicide kresoxim-methyl (methyl (E)-methoxyimino-2-[2-(o-toloxymethyl)phenyl] acetate) and the glycoside conjugates of its metabolites 2-[o-(o-hydroxymethylphenoxymethyl)phenyl]-2-(methoxyimino) acetic acid and 2-[o-(p-hydroxy-o-methylphenoxymethyl)phenyl]-2-(methoxyimino) acetic acid in or on the food commodity vegetable, cucurbit, group 9 at 0.5 parts per million (ppm). The proposed analytical method involves extraction, enzyme hydrolysis, partition, clean-up and detection of residues by HPLC/UV detection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–8490 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0023; FRL–8065–5]

Notice of Filing of a Pesticide Petition for Establishment of an Exemption from the Requirement of a Tolerance for Residues of Sodium Chlorite/Sulfur Dioxide in or on Various Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for residues of sodium chlorite/sulfur dioxide in or on wheat/barley/oats (grain, straw), and wheat (aspirated grain fractions) food and feed commodities.

DATES: Comments must be received on or before July 7, 2006..

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0023, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0023. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the homepage of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 5F6999. Bi-Oxide Technology, Inc., P. O. Box 2232, Calhoun, GA 30703, proposes to establish an exemption from the requirement of a tolerance for residues of sodium chlorite/sulfur dioxide in or on food and feed commodities barley/oats/wheat (grain straw) and wheat (aspirated grain fractions). Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–8718 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0480; FRL–8071–3]

Notice of Filing of a Pesticide Petition for an Exemption from Regulations for Residues of Soybean Oil, Polyethoxylated in or on Various Food Commodities When Used as an Inert Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from regulations for residues of soybean oil, polyethoxylated (Trade Name Agnique SBO-10) under 40 CFR 723.250(e) in or on various food commodities when used as an inert ingredient in pesticide products.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0480 and pesticide petition number (PP) 6E7067, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0480. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov

website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; phone number: (703) 308-8380, e-mail address: *gandhi.bipin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7067. Cognis Corporation, 4900 Este Ave., Cincinnati, OH 45232, proposes to establish an exemption from the requirement of a tolerance for residues of the inert ingredient, soybean oil, polyethoxylated CAS Reg. No. 61791–23–9 (Trade Name Agnique SBO-10) under 40 CFR in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–8721 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0479; FRL–8071–2]

Notice of Filing of a Pesticide Petition for an Exemption from Regulations for Residues of Ferric Citrate in or on Various Food Commodities When Used as an Inert Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from regulations for residues of ferric citrate in or on various food commodities when used as an inert ingredient in pesticide products.

DATES: Comments must be received on or before July 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0479 and pesticide petition number (PP) 6E7062, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0479. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8380; e-mail address: *gandhi.bipin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7062. The Shepherd Chemical Company, 4900 Beech St., Norwood, OH 45212, proposes to establish an exemption from the requirement of a tolerance for residues of the inert ingredient ferric citrate (CAS No. 2338–05–8), in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–8722 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0387; FRL–8067–9]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period January 1 through March 31, 2006 to control emergency pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8179.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions discussed above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under Docket identification number (ID) EPA–HQ–OPP– 2006–0387; (FRL–8067–9). Publicly available docket materials are available either electronically at *http://www.regulations.gov* or at the OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the '' **Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would

result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Alabama

Department of Agriculture and Industries
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)

California

Environmental Protection Agency, Department of Pesticide Regulation
Crisis: On February 27, 2006, for the use of maneb on walnuts to control bacterial blight. This program is expected to end on June 15, 2006. Contact: (Libby Pemberton)
Specific: EPA authorized the use of maneb on walnuts to control bacterial blight; March 1, 2006 to June 15, 2006. Contact: (Libby Pemberton)
EPA authorized the use of imidacloprid on pomegranates to control silverleaf whiteflies; April 15, 2006 to August 15, 2006. Contact: (Andrew Ertman)
EPA authorized the use of oxytetracycline on apples to control fire blight; March 21, 2006 to August 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Colorado

Department of Agriculture
Specific: EPA authorized the use of difenoconazole on sweet corn seed to suppress post emergence die-back complex and damping off caused by several pathogens (*Penicillium oxalicum, Fusarium oxysporum, Aspergillis niger*) of sweet corn; March 10, 2006 to March 9, 2007. Contact: (Libby Pemberton)
EPA authorized the use of lambda-cyhalothrin on barley to control Russian wheat aphids, cereal leaf beetle, and cutworms; April 7, 2006 to July 15, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Connecticut

Department of Environmental Protection
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 28, 2006 to June 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

Delaware

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Florida

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot; March 1, 2006 to October 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of thiophanate-methyl on citrus to control post-bloom fruit drop and stem end rot; March 13, 2006 to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)

Georgia

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of terbacil on watermelon to control morningglory; March 9, 2006 to August 15, 2006. Contact: (Stacey Groce)

Idaho

Department of Agriculture
Specific: EPA authorized the use of oxytetracycline on apples to control fire blight; April 1, 2006 to August 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of lambda-cyhalothrin on barley to control Russian wheat aphids, cereal leaf beetle and cutworms; May 1, 2006 to July 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)

Iowa

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; March 9, 2006 to February 1, 2007. Contact: (Stacey Groce)

Illinois

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Indiana

Office of Indiana State Chemist
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

Kentucky

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Louisiana

Department of Agriculture and Forestry
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)

Maine

Department of Agriculture, Food, and Rural Resources
Specific: EPA authorized the use of coumaphos in beehives to control varroa

mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of propiconazole on wild blueberries to control mummy berry disease; March 28, 2006 to June 30, 2006. Contact: (Carmen Rodia)

Maryland

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Massachusetts

Massachusetts Department of Food and Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 1, 2006 to June 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Michigan

Michigan Department of Agriculture
Specific: EPA authorized the use of thiophanate-methyl on blueberries to control various fungal diseases; April 1, 2006 to September 20, 2006. Contact: (Andrew Ertman)
EPA authorized the use of oxytetracycline on apples to control fire blight; April 1, 2006 to June 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 1, 2006 to September 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of chlorothalonil on ginseng to control botrytis and alternaria blight; March 15, 2006 to October 31, 2006. Contact: (Stacey Groce)
EPA authorized the use of zoxamide on ginseng to control phytophthora blight; March 15, 2006 to October 31, 2006. Contact: (Stacey Groce)
EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight; March 16, 2006 to October 31, 2006. Contact: (Stacey Groce)

Minnesota

Department of Agriculture
Quarantine: EPA authorized the use of cyproconazole on soybeans to control Asian soybean rust; March 30, 2006 to March 30, 2009. Contact: (Carmen Rodia)
Specific: EPA authorized the use of lambda-cyhalothrin on wild rice to control riceworms; August 1, 2006 to September 10, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

Mississippi

Department of Agriculture and Commerce
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to August 31, 2006. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; March 27, 2006 to September 30, 2006. Contact: (Libby Pemberton)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Missouri

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Montana

Department of Agriculture
Specific: EPA authorized the use of lambda-cyhalothrin on barley to control the cereal leaf beetle, Russian wheat aphid, and cutworms; March 15, 2006 to July 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; March 15, 2006 to July 20, 2006. Contact: (Libby Pemberton)
EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; February 23, 2006 to June 1, 2006. Contact: (Stacey Groce)

Nebraska

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

New Hampshire

Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to August 31, 2006. Contact: (Andrew Ertman)

New Jersey

Department of Environmental Protection
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to May 30, 2006. Contact: (Andrew Ertman)

New York

Department of Environmental Conservation
Crisis: On March 1, 2006, for the use of sodium hypochlorite on hard, non-porous surfaces to control *bacillus anthracis* (anthrax spores). This program ended on March 16, 2006. Contact: (Princess Campbell)
Specific: EPA authorized the use of desmedipham on red (table) beets to control several important broadleaf weeds, including hairy galinsoga, common ragweed, redroot pigweed, common lambsquarters, velvetleaf, nightshade *spp.* and wild mustard; May 15, 2006 to August 15, 2006. Contact: (Libby Pemberton)
EPA authorized the use of fomesafen on dry and snap beans to control broadleaf weeds; June 1, 2006 to August 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to June 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; March 9, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

North Carolina

Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 14, 2006 to August 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; March 27, 2006 to October 31, 2006. Contact: (Libby Pemberton)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

North Dakota

Department of Agriculture
Specific: EPA authorized the use of sulfentrazone on flax to control kochia; March 31, 2006 to June 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; February 23, 2006 to June 1, 2006. Contact: (Stacey Groce)

Ohio

Department of Agriculture
Specific: EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 20, 2006 to December 15, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)

Oklahoma

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

Oregon

Department of Agriculture
Specific: EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2006 to February 28, 2007. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)
EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; February 28, 2006 to June 1, 2006. Contact: (Stacey Groce)
EPA authorized the use of ethoprop on baby hops to control garden symphylans (*Scutigerella immaculata*); March 15, 2006 to May 31, 2006. Contact: (Libby Pemberton).
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to May 31, 2006. Contact: (Andrew Ertman)
EPA authorized the use of oxytetracycline on apples to control fire blight; April 1, 2006 to August 1, 2006. Contact: (Andrew Ertman)

Pennsylvania

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control broadleaf weeds; June 1, 2006 to August 30, 2006. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 1, 2006 to September 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)

Rhode Island

Department of Environmental Management
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 1, 2006 to June 30, 2006. Contact: (Andrew Ertman)

South Carolina

Clemson University
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 28, 2006 to August 31, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

South Dakota

Department of Agriculture
Quarantine: EPA authorized the use of cyproconazole on soybeans to control Asian soybean rust; March 30, 2006 to March 30, 2009. Contact: (Carmen Rodia)
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; March 9, 2006 to February 1, 2007. Contact: (Stacey Groce)

Tennessee

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; April 5, 2006 to February 1, 2007. Contact: (Stacey Groce)

Virginia

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 8, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thiophanate-methyl on tomato to control timber rot; March 3, 2006 to September 30, 2006. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

Washington

Department of Agriculture
Specific: EPA authorized the use of propiconazole on filberts to control Eastern filbert blight (*Anisogramma anomala*); February 22, 2006 to November 30, 2006. Contact: (Libby Pemberton)
EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2006 to February 28, 2007. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 16, 2006 to June 10, 2006. Contact: (Andrew Ertman)
EPA authorized the use of oxytetracycline on apples to control fire blight; April 1, 2006 to August 1, 2006. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)
EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; March 6, 2006 to June 1, 2006. Contact: (Stacey Groce)
EPA authorized the use of thymol in beehives to control varroa mite; March 15, 2006 to March 15, 2007. Contact: (Stacey Groce)

West Virginia

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mite and small hive beetle; February 23, 2006 to February 1, 2007. Contact: (Stacey Groce)

Wisconsin

Department of Agriculture, Trade, and Consumer Protection
Specific: EPA authorized the use of propiconazole on cranberries to control cottonball disease (*Monilinia oxycocci*); March 9, 2006 to June 15, 2006. Contact: (Libby Pemberton)
EPA authorized the use of chlorothalonil on ginseng to control botrytis and alternaria blight; March 15, 2006 to October 31, 2006. Contact: (Stacey Groce)
EPA authorized the use of zoxamide on ginseng to control phytophthora blight; March 15, 2006 to October 31, 2006. Contact: (Stacey Groce)
EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight; March 16, 2006 to October 31, 2006. Contact: (Stacey Groce)

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service
Crisis: On March 2, 2006, for the use of methyl bromide on avocado;bananas; plantains; blackberries; raspberries; edible cucurbit seeds; cottonseed for use as food or feed; cucurbit vegetables (not currently labeled); gherkins; ginger tops, fresh; fresh herbs and spices; kiwi fruit; leafy vegetables (not currently labeled); longan; lychee fruit; mint, dried; fresh mint; opuntia; rambutan; root and tuber vegetables (not currently labeled); dasheen (root and tuber); and snow peas to eradicate any pest new to or not known to be widely prevalent within the U.S. This program is expected to end on March 3, 2007. Contact: (Libby Pemberton)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 22, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

FR Doc. E6–8723 Filed 6–6–06; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8181–1]

Proposed CERCLA Administrative Cost Recovery Settlement; Rawleigh Building Site, Freeport, IL

AGENCY: Environmental Protection Agency (''Agency'').

ACTION: Notice; request for public comment on proposed administrative cost recovery settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Rawleigh Building site in Freeport, Illinois with the following settling parties:

Tusc. Corp. No. 1, Inc.
Tusc. Corp. No. 4, Inc.
Tusc. International, GP
The Tuscarora Corporation

The settlement requires the settling parties to pay $35,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

Background: Additional background information and/or the Agency's response to any comments received will be available for public inspection at the following locations: Freeport Public Library, 100 E. Douglas Street, Freeport, IL 61032. U.S. EPA Record Center, Room 714 U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

DATES: Comments must be submitted on or before July 7, 2006.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Records Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Steven P. Kaiser, Associate Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604 whose telephone number is (312) 353–3804. Comments should reference the Rawleigh Building Site, U.S. EPA Docket No. V–W–06–C–844, and should be addressed to Steven P. Kaiser, Associate Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven P. Kaiser, 77 West Jackson Boulevard, Chicago, Illinois 60604 whose telephone number is (312) 353–3804.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Site ID: Spill ID Number B5 G4.

Dated: May 17, 2006.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. E6–8818 Filed 6–6–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 8, 2006, from 10:30 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- Confidential Report on System Performance

Open Session

A. Approval of Minutes

- March 9, 2006 (Open and Closed)

B. Business Reports

- Financials
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: June 1, 2006.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 06–5160 Filed 6–6–06; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 7, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0938.

Title: Application for a Low Power FM Broadcast Station License.

Form Number: FCC Form 319.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 200.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $17,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC Form 319 is required to apply for a new or modified low power FM broadcast station. The data is used by FCC staff to determine whether an applicant has constructed its station in accordance with the outstanding construction permit and to update FCC station files. Data is extracted from the FCC Form 319 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Canton,

Deputy Secretary.

[FR Doc. E6–8731 Filed 6–6–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011527–012.

Title: East Coast Americas Service.

Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street; Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment adds Yang Ming Marine Transport, Corp. as a party to the agreement and reflects MOL's resignation from the agreement effective August 7, 2006.

By Order of the Federal Maritime Commission.

Dated: June 2, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–8836 Filed 6–6–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 015390N.
Name: American National Shipping Line, Inc.
Address: 214–77 Jamaica Avenue, Queens Village, NY 11428.
Date Revoked: May 19, 2006.
Reason: Failed to maintain a valid bond.

License Number: 008836N.
Name: Aras International, Inc. dba Umac Express Cargo of San Diego.
Address: 3126 E. Plaza Blvd., Suite F, National City, CA 91950.
Date Revoked: May 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016805F.
Name: E.I.B. Brokers, Inc.
Address: 2550 NW 72nd Avenue, Suite 315, Miami, FL 33122.
Date Revoked: May 24, 2006.
Reason: Failed to maintain a valid bond.

License Number : 018087NF.
Name: Krystal Logistics USA, Inc.
Address: 11700 NW 101 Road, Suite #6, Miami, FL 33178
Date Revoked: March 29, 2006.
Reason: Failed to maintain valid bonds.

License Number : 016802N.
Name: Peninsula Cargo, Inc.
Address: 6826 Somerset Blvd., Unit 7, Paramount, CA 90723.
Date Revoked: May 14, 2006.
Reason: Failed to maintain a valid bond.

License Number : 018526N.
Name: Topocean Consolidation Services (New York), Inc.
Address: 181 South Franklin Avenue, #204, Valley Stream, NY 11581.
Date Revoked: May 24, 2006.
Reason: Failed to maintain a valid bond.

License Number : 018351N.

Name: Trans Global—NA USA, Inc.

Address: 1185 Morris Avenue, Union, NJ 07083.

Date Revoked: May 17, 2006.

Reason: Surrendered license voluntarily.

License Number: 009601N.

Name: Worldwide Exhibition Services, Inc.

Address: 225 Broadway, Suite 2100, New York, NY 10007.

Date Revoked: May 18, 2006.

Reason: Failed to maintain a valid bond.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–8835 Filed 6–6–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
018763F	Dietrich-Exccel, LLC dba Dietrich-Logistics Florida, 6701 NW 7th Street, Suite 135, Miami, FL 33126.	April 9, 2006.
018184N	JP Express Shipping, Corp., 1894 Washington Avenue, Bronx, NY 10457	May 4, 2006.
019407N	James Worldwide, Inc., 550 E. Carson Plaza Drive, Suite 123, Carson, CA 90746	April 28, 2006.
017975N	Johnny Air Cargo Inc., 69–40 Roosevelt Avenue, Woodside, NY 11377	April 30, 2006.
018218N	Pacheco Express Shipping Inc., 1570 Webster Avenue, Bronx, NY 10457	April 30, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–8834 Filed 6–6–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non—Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Fil-Am Cargo, 631 Giguere Ct. A–5, San Jose, CA 95133. Officers: Loreto H. Garcia, Partner (Qualifying Individual), John L. Lucas, Partner.

APA Logistics LLC, 545 Dowd Avenue, Elizabeth, NJ 07201. Officers: Thomas Downs, President (Qualifying Individual), Joseph Cotogno, Vice President.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Global Tech Investments, L.L.C. dba Global, Freight Forwarding, 25320 137th Avenue SE., Kent, WA 98042. Officers: Don Hou (Yufei Hou), Freight Manager (Qualifying Individual), Zhenhai Li, CEO.

OCT Corporation dba OCT Marine dba OCT Global, Logistics, 11250 NW., 25th Street, Suite 114, Miami, FL 33122. Officer: Christian M. Ollino, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Marina Flores U.S. Customs Broker, 49 SE., Street, #893 Reparto Metroplitano, San Juan, PR 00921, Rosa Marina Flores, Sole Proprietor.

PEMA Logistics, Inc., 11040 S.W. 120 Street, Miami, FL 33176. Officers: Pedro A. Abascal, President (Qualifying Individual), Mabel D. Abascal, Secretary.

Express Northwest International Freight Services Inc., 18335 8th Avenue South, Seattle, WA 98148. Officers: Tory J. Plaidance, Ocean Export Manager (Qualifying Individual), Kathy Mclean, President.

Dated: June 2, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–8837 Filed 6–6–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Vernon R. Pfaff and Barbara Ann Pfaff, acting in concert and as co–trustees of the Daniel R. Burkley Trust, and Tiffany K. Pfaff, all of Fairbury, Nebraska; to acquire voting shares of First National Fairbury Corporation, and thereby inidrectly acquire voting shares of The First National Bank of Fairbury, Fairbury, Nebraska.

Board of Governors of the Federal Reserve System, June 2, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–8794 Filed 6–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Table Rock Bancshares Corporation, Kimberling City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Table Rock Community Bank, Kimberling City, Missouri.

2. Mid–Missouri Bancshares, Inc., Springfield, Missouri; to merge with First Financial Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire voting shares of First National Bank of Mount Vernon, Mount Vernon, Missouri.

3. Mid–Missouri Bancshares, Inc., Springfield, Missouri; to merge with Central States Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire voting shares of Webb City Bank, Webb City, Missouri.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Orange Community Bancorp, Orange, California; to become a bank holding company by acquiring 100 percent of the voting shares of Orange Community Bank, Orange, California.

Board of Governors of the Federal Reserve System, June 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–8789 Filed 6–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Farmers and Merchants Financial Corporation, Ashland, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers and Merchants National Bank of Ashland, Ashland, Nebraska.

Board of Governors of the Federal Reserve System, June 2, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–8793 Filed 6–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Lamplighter Financial, MHC, Wauwatosa, Wisconsin; to continue to engage *de novo* through its subsidiary Wauwatosa Holdings, Inc., Wauwatosa, Wisconsin, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–8788 Filed 6–6–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Nationwide Health Information Network Forum

ACTION: Announcement of Nationwide Health Information Network Forum.

SUMMARY: This notice announces the first forum of the Office of the National Coordinator for Health Information Technology to address the Nationwide Health Information Network functional requirements. The Forum is open to the public and will discuss the requirements needed for a Nationwide Health Information Network that facilitates the accurate, appropriate, timely, and secure exchange of health information.

DATES: June 28, 2006 from 8:30 a.m. to 5 p.m. and June 29, 2006 from 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Institute of Health, Natcher Center, 45 Center Drive, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: The Office of the National Coordinator for Health Information Technology at 202–690–7151 or the Nationwide Health Information Network Forum home page at *http://www.hhs.gov/healthit/NHIN_Forum1.html.*

John Loonsk,

Director, Office of Interoperability and Standards, Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

[FR Doc. E6–8832 Filed 6–6–06; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection as part of an AHRQ contract for ''Privacy and Security Solutions for Interoperable Electronic Health Information Exchange'' (the Assessment). In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ is submitting a request to OMB for emergency review.

AHRQ is requesting an emergency review of this collection because the information is needed for subsequent health information technology projects later this year. Because subcontracts were solicited and awarded to the States, it was not possible to accurately quantify the public burden earlier this year. Data collection subcontract proposals were solicited from States and until they were reviewed, selected, awarded and accepted, it was not possible to accurately quantify the public burden earlier.

DATES: Comments on this notice must be received by July 7, 2006.

ADDRESSES: Written comments should be submitted to John Kraemer, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Washington, DC 20503, (202) 395–6880.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ clearance officer, Doris Lefkowitz, 540 Gaither Road, Suite 5036, Rockville, MD 20850, (301) 427–1477.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, 540 Gaither Road, Suite 5036, Rockville, MD 20850, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

The Assessment Plan

Regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) established baseline privacy requirements for protected health information and security requirements for protected health information. Many States, institutions, and health care providers have adopted policies that go beyond HIPAA. The manner in which hospitals, physicians, and other health care organizations implement security and privacy policies varies and is tailored to meet their individual organizations' needs. These variations in policies present challenges for widespread electronic health information exchange.

The proposed data collection is the foundational part of a project under AHRQ's Assessment contract. The project seeks to: Identify variations in privacy and security practices and laws affecting electronic health information exchange; learn about and develop best practices and proposed solutions to address identified challenges; and increase expertise in communities about health information privacy and security protections. The project, being managed by RTI International and the National Governors Association, is a public-private collaboration. The contractor will work with up to 33 States and Puerto Rico to assess variations in organization-level business policies and practices, and the underlying laws that affect the electronic exchange of health information, identify and propose practical solutions while preserving privacy and meeting security concerns addressed in applicable Federal and State laws, and develop detailed plans to implement solutions. RTI International, a private, nonprofit corporation, was selected as the contract recipient to conduct this study.

The use of health information technology (IT) and the adoption of electronic health records (EHRs) are intended to enable health information to follow patients throughout their care in a seamless and secure manner. Widespread use of EHRs offers a unique means of improving quality, lowering health care costs, and preventing medical errors which contribute to the deaths of between 50,000 and 100,000 Americans per year.

This privacy and security assessment project is a key part of the Department of Health and Human Services' health IT plan to accomplish the President's initiative to foster and accelerate widespread use of electronic health records. Information collected by this effort is critical for the advancement of

health IT and will be used to achieve the goal of developing seamless and secure electronic health records nationwide.

Methods of Collection

Participation in the Assessment will be fully voluntary and non-participation will have no affect on eligibility for, or receipt of, future AHRQ health services research support or on future opportunities to participate in research or to obtain informative research results. In each of the 33 States and Puerto Rico, 15 meetings will be held with stakeholder groups. Each group will have approximately 25 participants who will represent providers of health services, entities supporting health delivery systems, public health agencies, patients, individual consumers, and consumer groups. During these stakeholder meetings, participants will discuss different ''scenarios'' describing practical examples of health information exchanges (*e.g.,* patient care, emergency/disaster response, payments, research, compliance with mandatory statutory reporting, law enforcement requests for information, etc.). The objective of these meetings is to identify and assess the affect of organization-level business policies and practices that promote or pose challenges to health information exchange.

ESTIMATED ANNUAL RESPONDENT BURDEN

Type of research activity	Number of respondents	Estimated time per respondent (hours)	Total burden hours
Stakeholder Meetings	12,750	3	38,250
Total	12,750	3	38,250

Estimated Costs to the Federal Government

Expenses (equipment, overhead, printing and support staff) will be incurred by AHRQ components as part of their normal operating budgets. No additional cost to the Federal Government is anticipated.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 2, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–5226 Filed 6–5–06; 1:50 pm]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of conference call.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee of the 2005 White House Conference on Aging will discuss items related to the final report of the Conference during a conference call. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, should inform the contact person listed below in advance of the conference call. This notice is being published less than 15 days prior to the conference call due to scheduling problems.

DATES: The conference call will be held on Monday, June 12, 2006, at 11 a.m., Eastern Standard Time.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll-free, 1–800–369–3181, passcode: 2108199, call leader: Nora Andrews, on the date and time indicated above.

FOR FURTHER INFORMATION CONTACT: Nora Andrews, (202) 357–3463, or e-mail at *Nora.Andrews@hhs.gov.* Registration is not required. Call in is on a first come, first-served basis.

Dated: June 1, 2006.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. E6–8750 Filed 6–6–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through May 17, 2008.

For information, contact Dr. Jose Cordero, Executive Secretary, National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E87, Atlanta, Georgia 30333, telephone 404/498–3800 or fax 404/498–3070.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–8825 Filed 6–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Relationship Quality Instrument for Mentoring Children of Prisoners Program.

OMB No.: New Collection.

Description: The Promoting Safe and Stable Families Amendments of 2001 (Pub. L. 107–133) amended Title IV–B of the Social Security Act (42 U.S.C. 629–629e) to provide funding for nonprofit agencies that recruit, screen, train, and support mentors for children with an incarcerated parent or parents. The Family and Youth Services Bureau (FYSB) of the Administration for Children and Families, United States Department of Health and Human Services, administers the Monitoring Children of Prisoners (MCP) program. The MCP program creates lasting, high-quality one-to-one mentoring relationships that provide young people with caring adult role models. The quality of these relationships is an important indicator of success in mentoring programs. Previous research has shown an association between high-quality mentoring relationships and positive changes in youth behavior associated with positive youth benefits, such as improved school attendance, reductions in risk behavior, and other benefits.

The Relationship Quality Instrument consists of 15 rigorously field-tested questions [1] about the relationship, plus several questions that establish context (age, gender, duration of relationship and frequency of contacts, etc.). The answers to the questions help assess how satisfied the youth (mentee) is with the relationship; whether the mentee is happy in the relationship; whether the mentee trusts the mentor; and whether the mentor has helped the mentee to cope with problems. Researchers in the field of mentoring have tested and validated the questions.

FYSB requires grantees receiving funding to provide information that can be used to evaluate outcomes for participating children. FYSB will use the information provided by the instrument to assure effective service delivery and program management and to guide the development of national monitoring and technical assistance systems. Finally, FYSB will use data from this collection for reporting program outcomes to Congress in the FY 2006 Performance Report during the budget process and as the basis for outcome evaluation of the program over the long term.

Respondents: Public, community- and faith-based organizations receiving funding to implement the MCP program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Relationship Quality Instrument for Mentoring Children of Prisoners Program.	215 MCP grantees serving a total of approximately 25,000 children in the active annual caseload.	1	116 (average caseload for MCP grantee).	24,940.

Estimated Total Annual Burden Hours: 24,940.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: June 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5174 Filed 6–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Evaluation of the Head Start Region III I am Moving, I am Learning (IM/IL) Program.

OMB No.: New Collection.

Description: The purpose of this evaluation is to examine the implementation of the Head Start project *I am Moving, I am Learning* (IM/IL) as a preventive intervention targeting obesity in children. IM/IL was designed to fit within the Head Start Performance Standards and the Head Start Child Outcomes Framework through enhancements to current teaching and family support practices by providing more focused guidance on quality movement, gross and fine motor development, and child nutrition.

This data collection will be conducted among programs implementing IM/IL in Region III and will gain information about each site's program context and service components, including level of adoption of IM/IL enhancements, intensity of implementation, and sustainability of enhancements. Outcomes and goals of the IM/IL program that can be measured will also be assessed.

Respondents: Head Start directors, management teams, teachers, and staff in Region III that received IM/IL training; parents or guardians of children who attend Head Start

[1] Rhodes J., Reddy, R., Roffman, J., and Grossman J.B. (March, 2005). Promoting Successful Youth Mentoring Relationships: A Preliminary Screening Questionnaire. The Journal of Primary Prevention, 26:2, 147–167.

programs where IM/IL is being implemented.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Managers of IM/IL: Telephone Interview	81	1	2	162
Head Start Managers of IM/IL: Questionnaire	81	2	1	162
Head Start Teachers: Telephone Interview	243	1	2	486
Head Start Teachers: Questionnaire	243	2	1	486
Head Start Managers of IM/IL and Teachers: Focus Group	342	1	2	684
Parents/Guardians: Focus Group	192	1	2	384

Estimated Total Annual Burden Hours: 2,364.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5175 Filed 6–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Temporary Assistance for Needy Families (TANF)/National Directory of New Hires (NDNH) Match Results Report.

OMB No.: New Collection.

Description: Section 453(j)(3) of the Social Security Act (the Act) allows for matching between NDNH (maintained by the Federal Office of Child Support Enforcement (OCSE)) and State TANF agencies for the purpose of carrying out responsibilities under programs funded under part A of Title IV of the Act. To assist OCSE and the Office of Family Assistance in measuring savings to the TANF program attributable to the use of NDNH data matches, the State TANF agencies have agreed to provide OCSE with a written description of the performance outputs and outcomes attributable to the State TANF agencies' use of NDNH match results. This information will help OCSE demonstrate how the NDNH supports the President's Management Agenda as well as OCSE's mission and strategic goals.

Respondents: State and TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF/NDNH Match Results Report	40	4	.17	27

Additional Information Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T_Astrich@omb.eop.gov.*

Dated: June 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5176 Filed 6–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged non-federal home energy resources for low-income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87.

The LIHEAP leveraging report obtains information on the resources by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low-income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged non-federal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposed to request a three-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5177 Filed 6–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Tribal Temporary Assistance for Needy Families (TANF) Program Data Reporting Instructions and Requirements

OMB No.: 0970—0215.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)) mandates that Federally recognized Indian Tribes with an approved Tribal TANF program collect and submit o the Secretary of the Department of Health and Human Services data on the recipients served by the Tribes' programs. This information includes both aggregated and disaggregated data on case characteristics and individual characteristics. In addition, Tribes that are subject to a penalty are allowed to provide reasonable cause justifications as to why a penalty should not be imposed or may develop and implement corrective compliance procedures to eliminate the source of the penalty. Finally, there is an annual report, which requires the Tribes to describe program characteristics. All of the above requirements are currently approved by OMB and the Administration for Children and Families is simply proposing to extend them without any changes.

Respondents: Indian Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Final Tribal TANF Data Report	56	4	451	101,024
Tribal TANF Annual Report	56	1	40	2,240
Tribal TANF Reasonable Cause/Corrective Action Documentation Process	56	1	60	3,360

Estimated Total Annual Burden Hours: 106,624.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–5178 Filed 6–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

The Data Measures, Data Composites, and National Standards To Be Used in the Child and Family Services Reviews

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Final notice of the data measures, data composites, and national standards to be used in the Child and Family Services Reviews.

SUMMARY: On November 7, 2005, the Administration for Children and Families (ACF) published a notice in the **Federal Register** soliciting comment regarding its proposal to replace the six data measures used as part of the assessment of State performance on the Federal Child and Family Services Review (CFSR) with six data composites (70 FR 67479). Based on the results of our data analyses and a review of comments from the field, ACF made the following decisions:

- The CFSR will use a State's performance on two individual data measures as part of the assessment of the State's substantial conformity with CFSR Safety Outcome 1—Children are, first and foremost, protected from abuse and neglect. A national standard is established for each of these measures.
- The CFSR will use a State's performance on four data composites as part of the assessment of the State's substantial conformity with CFSR Permanency Outcome 1—Children have permanency and stability in their living situations. A national standard is established for each of these data composites.

This announcement presents the following information:

- The decisions made by the Children's Bureau regarding use of data composites for the Federal Child and Family Services Review (CFSR);
- The composites and additional data that will be used as part of the assessment of a State's substantial conformity with the CFSR requirements; and
- Descriptive statistics relevant to each composite and measure, including the score that will serve as the national standard for the second round of the CFSR.

Where relevant, the announcement addresses key comments from the field in response to the **Federal Register** notice.

The announcement also includes the following attachments:

Attachment A: Data to be included in the CFSR State Data Profile.

Attachment B: Methodology for Composite Construction.

FOR FURTHER INFORMATION CONTACT: Contact: John Hargrove at *John.Hargrove@acf.hhs.gov*, (202) 205–8625.

SUPPLEMENTARY INFORMATION:

I. Background

The CFSR is ACF's results-oriented comprehensive monitoring system designed to promote continuous improvement in the outcomes experienced by children and families who come into contact with public child welfare agencies. ACF developed the CFSR in response to a mandate in the Social Security Amendments of 1994 (*see* section 1123A of the Social Security Act) for the Department of Health and Human Services to promulgate regulations for reviews of State child and family services programs under titles IV–B and IV–E of the Social Security Act. ACF's final regulations on the CFSR process, issued in 2000, can be found at 45 CFR 1355.31 through 1355.37. Between fiscal year (FY) 2001 and FY 2004, ACF conducted the first round of the CFSR. A ''round'' is defined as a cycle of the CFSR that includes every State, the District of Columbia, and Puerto Rico.

Information for each CFSR came from the following sources: (1) The Statewide Assessment, (2) case-level reviews conducted by a team of Federal and State reviewers, (3) interviews with key stakeholders, and (4) State data from the Foster Care File of the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the Child File of the National Child Abuse and Neglect Data System (NCANDS), or an alternative data source approved by the Children's Bureau. Using this information, the first round of the CFSR assessed State performance on seven outcomes and seven systemic factors. For the most part, performance on the seven outcomes was determined through the results of the case reviews. However, in the first round of the CFSR, the assessment for two outcomes also included a State's performance on six national data measures that ACF adapted from measures developed for the *Annual Report to Congress on Child Welfare Outcomes* in response to the requirements of section 479A of the Social Security Act. ACF established national standards for each of the six data measures, all of which were calculated from data reported by States to NCANDS and AFCARS. ACF described these six data measures and the national standards in the preamble to the final CFSR regulation, published in the **Federal Register** (65 FR 4024–4025). This same regulation provides information on how ACF calculated the national standards associated with each of the six data measures. Subsequently, ACF issued information memoranda on the specific national standards that would be used in the initial CFSR implementation (see ACYF–CB–IM–00–11 and ACYF–CB–IM–01–07).

The following performance measures and national standards were used during the first round of the CFSR as part of the assessment of a State's substantial conformity with CFSR Safety Outcome 1—Children are, first and

foremost, protected from abuse and neglect:

• Repeat maltreatment—*Of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, 6.1 percent or less had another substantiated or indicated report within a 6-month period.*

• Maltreatment of children in foster care—*Of all children who were in foster care during the reporting period, 0.57 percent or less were the subject of substantiated or indicated maltreatment by a foster parent or facility staff member.*

The following performance measures and national standards were used as part of the assessment of a State's substantial conformity with CFSR Permanency Outcome 1—Children have permanency and stability in their living situations:

• Timeliness of reunification—*Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, 76.2 percent or more were reunified in less than 12 months from the time of the latest removal from home.*

• Re-entry into foster care—*Of all children who entered foster care during the reporting period, 8.6 percent or less were re-entering foster care in less than 12 months of a prior foster care episode.*

• Timeliness of adoption—*Of all children who exited foster care to a finalized adoption, 32 percent or more exited foster care in less than 24 months from the time of the latest removal from home.*

• Placement stability—*Of all children who have been in foster care for less than 12 months from the time of the latest removal from home, 86.7 percent or more have had no more than two placement settings.*

ACF views the CFSR as a dynamic process. We made ongoing improvements after each year of the first round of reviews in response to our experiences in the field and to suggestions from State child welfare agency administrators. After completion of the first round in FY 2004, ACF contracted with a consultant to study the CFSR and make further suggestions regarding potential revisions to the process. To assist in this task, the consultant convened a CFSR workgroup including State child welfare agency administrators, child welfare specialists, and researchers. Based on input from this workgroup, the consultant presented a set of suggestions for ACF. One suggestion was to replace the existing CFSR single data measures for which national standards were established with data composites that incorporate a wider range of performance areas relevant to a particular child welfare domain. ACF determined that making this change would enhance the quality of the CFSR for the following reasons:

• *The recommendation is consistent with our observations during the first round of the CFSR that expanding the scope of data pertaining to a particular child welfare domain will provide a more effective assessment of State performance.* For example, expanding the scope of data pertaining to the timeliness of reunification will address various performance areas relevant to this domain, including the permanency of the reunification.

• *Data composites will provide a more holistic view of State performance in a particular domain than a single data measure can achieve.* For example, the current CFSR measure of timeliness of adoptions considers the percentage of children adopted within 24 months of entering foster care, but not children's experiences with regard to the timeframes between key points in the adoption process, such as the time from termination of parental rights (TPR) to a finalized adoption.

• *Data composites will ensure that the data component of a State's performance with regard to a particular domain will not depend on one measure.* For example, a State's performance regarding the data composite for the domain of timeliness to adoption may be uneven, with performance higher in one area than in another. However, overall performance on the composite may be high. Thus, the data composite will account for both the strengths and weaknesses that a State exhibits within a particular domain.

• *Data composites are being used by the Federal government to assess other programs.* For example, composite measures are being developed and used for the *No Child Left Behind* initiative. In addition, composite measures have been used to evaluate the performance of hospitals in various health-related domains.

II. Analysis and Decisions

ACF published a **Federal Register** notice presenting proposed data composites and performance areas for each composite on November 7, 2005, with a 30-day public comment period. We received 66 letters from State and local child welfare agencies, national and local advocacy groups, researchers, State and local courts, and national associations representing groups of practitioners. ACF's final decisions regarding the composites are presented below. These decisions are based on our review of comments from the field, our data analyses, and the principles and objectives of the Social Security Amendments of 1994 and the Adoption and Safe Families Act (ASFA) of 1997.

A. ACF Will Replace the Existing Six Data Measures Used for the First Round of the CFSR With Four Data Composites and Two Single Measures

The majority of respondents to the **Federal Register** notice expressed support for our proposal to use data composites as part of the assessment of a State's substantial conformity with the requirements of the CFSR. A few respondents expressed concern about the potential burden to the States involved in revising their data systems to provide data for the composites. However, the composites will not require States to revise their basic data systems because all data necessary for the composites come from existing AFCARS or NCANDS data elements. Also, because States submit the NCANDS Child File on a voluntary basis, the CFSR regulation allows us to accept data from an alternative source from those States that do not submit the Child File to NCANDS. However, for the second round of the CFSR, the use of alternative data sources applies only to measures calculated from data reported to the NCANDS Child File. It does not apply to measures calculated from data reported to AFCARS.

A few respondents expressed concern that the composite approach would make it difficult for States to track their own performance in specific areas and to identify those areas where improvements may be needed. To assist States in tracking their performance on the composites, we will provide them with a State Data Profile that presents information on all of the individual performance areas included in the composites as well as the composite scores.[1] The State Data Profile also will include information pertaining to the relative contribution (or weight) of a variable to the composite. Attachment A itemizes the data that will be included in the State Data Profile to be provided to each State. ACF will provide States with the syntax used for establishing each of the performance areas and calculating the composite scores. In addition, we will ensure that technical assistance is available to States in developing the tools necessary to track their performance.

[1] Several States requested that ACF continue to report data pertaining to the six data measures used in the first round of the CFSR. This information will be provided in the State Data Profile.

Although ACF initially intended to replace the six data measures with six data composites, we have decided to use two single measures that are similar to those used in the first round of the CFSR to assess State performance with regard to CFSR safety outcome 1—Children are, first and foremost, protected from abuse and neglect. We made the decision not to develop safety composites for the following reasons:

- Many respondents to the **Federal Register** notice expressed concern about the usefulness and appropriateness of the new measures proposed for the safety-related composites.
- A review of the data for the measures revealed potential problems with consistency in State reporting, particularly with regard to how States defined certain data elements.
- The results of the data analyses for the composites did not provide strong support for inclusion of some of the measures proposed for the composite.

Additional information relevant to our decision to eliminate particular measures is provided in the section of this Announcement pertaining to CFSR Safety Outcome 1.

B. ACF Used Principal Components Analysis To Develop the Composites

ACF identified and implemented the methodology for establishing data composites in consultation with an internationally known expert statistician. Our goal was to increase the amount of pertinent information that would be considered in assessing a State's performance with regard to particular outcomes without increasing the number of measures that would be subject to a national performance standard. We reviewed with our expert consultant all possible statistical methodologies and determined that a principal components analysis was the most appropriate data analysis method for achieving our goal.

Principal components analysis is a commonly used statistical technique for reducing a large set of variables into a smaller set by combining highly inter-correlated variables. Use of this analysis is based on two basic psychometric principles of measurement: (a) A test with more questions is more reliable; and (b) combining related scores into a composite score results in a more reliable and valid score than the individual scores on which the composite is based. Each variable in the set is given a weight in accordance with its relative importance to the overall composite. (*See* attachment B for more information on this.) These sets, or principal components, usually are more stable and easier to interpret than individual variables because they incorporate several variables that are related to one another but also capture unique information.

The principal components analyses conducted to generate the composites were closely guided by our expert consultant and were systematic and conservative in nature. The analyses generated valid and meaningful results that exceed the minimum requirements of acceptability for this analytical technique. Decisions made regarding the composites were based on the empirical data resulting from the analyses. Consequently, we believe that the composites established will enhance the assessment of State performance.

A few respondents questioned whether a principal components analysis methodology was appropriate and requested an opportunity to review the details of the methodology and to provide comment on the appropriateness of the methodology. Because the methodology used is based on a sound and widely accepted statistical process, we will not be submitting it for comment from the field. Many of the concerns expressed by respondents are the result of a lack of understanding of principal components analysis. The specifics regarding these concerns are addressed in attachment B, which also provides a description of how the methodology was used in generating the composites.

ACF understands that our composite approach represents a new conceptual framework for many States. Therefore, we will conduct orientation sessions with States in each ACF region to familiarize them with the composites and the methodology prior to implementing the next round of the CFSR. In addition, the data set used for the principal components analyses and the syntax used to construct the composites will be made available to States.

C. Wherever Possible and Appropriate, the Data Composites Incorporate a Combination of Longitudinal Measures That Follow a Cohort of Children Over Time, Measures That Capture Outcomes Experienced by Children Exiting Foster Care in a Given Year, and Measures That Assess the Status of Children in Foster Care Within a Particular Timeframe

Several respondents recommended that all measures in the data composites should be longitudinal measures that follow a cohort of children over time to establish timeliness of permanency and placement stability. These respondents suggested that such measures, particularly those that follow a cohort of children entering foster care, reflect a more accurate picture of State performance in these areas than do other types of measures. However, several other respondents expressed support for maintaining the measures used in the first round of the CFSR that capture outcomes experienced by children exiting foster care in a given year. As one of these respondents noted, ''I have heard and studied much of the criticism (of the six indicators), but I find much of the criticism to be without merit. * * * the six indicators have served us very well here in (State).''

To address both perspectives, we have included as many longitudinal measures as possible in the composites along with other types of measures. Some respondents expressed concern that AFCARS does not permit a longitudinal analysis that crosses over fiscal years. This is not true. We currently can and have used AFCARS data to assess children across years—*i.e.*, children entering or exiting foster care in one year can be followed in subsequent years. However, our ability to conduct longitudinal analysis for the CFSR is restricted somewhat by the timeframes of the CFSR and, in particular, the need to have data that reflect both a recent level of performance and change in performance during the period of program improvement. For example, the data used at the time of the second round of the CFSR for a given State cannot overlap with a State's Program Improvement Plan (PIP) implementation period. Within the context of the CFSR timeframes, it is not feasible to follow children for longer than a 12-month period and no measure can incorporate more than four AFCARS reporting periods (2 years).

Given this situation, most of the final composites include a combination of types of measures. ACF believes that each type of measure contributes to an understanding of State performance from a particular perspective. We have used the principal components analyses to determine the relative contribution of each type of measure to the overall composite. (*See* attachment B for more information on this issue.) Specific information about decisions pertaining to the types of measures incorporated in each composite is provided in the discussion of the individual composites.

D. ACF Will Use the Data Composites for the Second Round of the CFSR

Many respondents to the **Federal Register** notice, while indicating support for the data composite approach, proposed that ACF ''pilot test'' this approach during the second round of the CFSR and not implement

this approach for assessment purposes until a later round of the CFSR. However, because the methodology used for establishing the composites is statistical rather than theoretical, the concept of a pilot test is not applicable. For example, the process of conducting the CFSR was initially piloted in 14 States to test whether the procedures (*e.g.*, Statewide Assessment, case reviews, and stakeholder interviews) were appropriate and yielded the desired information. Although this process is valid for testing the utility of procedures, it is not applicable to data composites, which are derived from a statistical analysis of data submitted by the States to AFCARS.[2] However, the quality of the data submitted by the States to these Federal systems may be an issue for some States. ACF strongly encourages States to assess the quality of the data that they report to these systems and to improve the quality if any problems are identified. In addition, ACF will continue to provide guidance to States, either directly or through ACF's resource center, the National Resource Center for Child Welfare Data and Technology, in improving the quality of the data submitted to AFCARS.

Instead of a ''pilot,'' ACF conducted a replication of the principal components analyses on data from prior years to examine whether the resulting component structures exhibit stability over time. The composites were constructed with the focus on data from fiscal year (FY) 2004. Data from FY 2003 were incorporated for the measures involving long-term longitudinal analysis. ACF conducted two replications of the principal components analysis on data reported to AFCARS relevant to FY 2002/2003 and FY 2001/2002. The results of this replication indicate that there is a clear and stable structure in the data to support the use of the composites as a meaningful component of the CFSR assessment of State performance.

E. ACF Will Establish National Standards for the Two Independent Measures and for Each of the Four Composites

Many respondents to the **Federal Register** notice recommended that ACF not establish national standards for the data indicators used in the next round of the CFSR. They proposed that ACF assess performance based on continuous improvement on the data measures over time within an individual State.

After consideration of this recommendation, ACF decided to maintain the practice of establishing national standards for the CFSR and to continue to use the standards as part of the assessment of a State's substantial conformity with outcomes pertaining to safety and permanency. The reasons for this decision are the following:

- ACF initially established national standards for each of the six CFSR data measures as desired national goals for the field with regard to achieving safety and permanency for children. We believe that setting national goals for the field is an important part of ensuring that Federal, State, and local agencies remain focused on achieving the highest level of results for children who come into contact with the nation's child welfare systems.
- Because the national standards for the first round of the CFSR were based on the distribution of performance across States, they are relative rather than absolute. By setting the standard at the 75th percentile (as adjusted for sampling error and for normality of distribution), we believe that the goals represented by the standards are realistic and attainable and that, by establishing standards, ACF is promulgating the expectation that States make concerted efforts to achieve these goals.
- The assessment of a State's performance on its individual PIP is, and will continue to be, based on change in an individual State's performance over time rather than on whether the State meets the national standard. With regard to the national data measures, ACF has not required that a State meet the national standard in order to avoid financial penalties, only that the State demonstrate an agreed-upon amount of progress in moving toward the standard.

The primary concern raised by respondents to the **Federal Register** notice that pertained to the issue of national standards was that the standards involve a comparison among States that is not valid because variations in State practices, statutes, and policies often impact the comparability of performance on a particular measure. ACF acknowledges that variations in policies and statutes can affect comparability and has attempted to address these variations both in the new measures proposed for the composites and in the use of composites themselves.

The standards were calculated using data pertaining to State performance in FY 2004, with data from FY 2003 included when there is a measure requiring a longitudinal analysis that spans fiscal years. When the performance of individual States is considered with regard to the national standards, we will ensure that the State data pertain to time periods that are after completion of the PIP implementation period.

F. ACF Will Not Establish Separate National Standards Based on Variations Across States With Regard to the Age or Race/Ethnicity of Children in Foster Care, or Whether the Reason for Entering Foster Care Was Maltreatment or the Child's Behavior

Many respondents to the **Federal Register** notice suggested that ACF should assess performance on the composites and the measures to determine whether there are differences in performance as a result of children's age, race/ethnicity, or reasons for entering foster care and that the national standards should be adjusted accordingly. For example, respondents noted that older children are more likely to experience placement changes than younger children, and therefore, States that have a relatively high percentage of older children entering the foster care population could not be expected to perform as well on measures of placement stability as other States.

We are not establishing separate performance standards for children of different ages, races, or reasons for entering foster care. Consistent with the tenets of the Adoption and Safe Families Act and with the best interests of children, all children have the same need for safety, placement stability, and timely permanency. Rather, this type of analysis is best left to the States to further examine the characteristics of their own child welfare populations as part of their Statewide Assessment.

A few respondents to the **Federal Register** notice also suggested that rather than adjust the national standards, the measures for the permanency-related composites should apply only to children who enter foster care as a result of abuse or neglect. ACF decided not to exclude children from the measures who enter foster care for reasons other than child maltreatment. We believe that all children who are in the custody of the State child welfare agency and who are reported to AFCARS share the same needs for permanency and placement stability regardless of their reason for entering care.

III. Data Measures and Composites

In this section, we present the measures and composites that will be used in the next round of the CFSR. We also identify and discuss the critical

[2] The composites pertain to permanency only and therefore do not involve data from NCANDS.

features of each measure and composite and address key comments concerning the measures and composites received in response to the Federal Register notice. Table 1 provides summary information regarding all of the composites, measures, and national standards to be used in the second round of the CFSR.

A. CFSR Measures That Will Be Used as Part of the Assessment of Substantial Conformity With CFSR Safety Outcome 1—Children Are, First and Foremost, Protected From Abuse and Neglect

Two individual measures rather than composites will be used as part of the assessment of substantial conformity with CFSR Safety Outcome 1. These measures are the following:

- Recurrence of maltreatment. Of all children who were victims of substantiated or indicated abuse or neglect during the first 6 months of the reporting year, what percent did not experience another incident of substantiated or indicated abuse or neglect within a 6-month period?
- Maltreatment of children in foster care. Of all children in foster care during the reporting period, what percent were not victims of a substantiated or indicated maltreatment by foster parents or facility staff members?

Key Features of the Measures

These measures are similar to those used in the first round of the CFSR. The only difference is that the focus has shifted from the occurrence of maltreatment to the absence of maltreatment. We made this change for the following reasons:

- Respondents to the **Federal Register** notice and others in the field recommended that all data measures address performance from a positive perspective.
- The composite measures pertaining to permanency and placement stability are all in the same direction with higher scores meaning higher levels of performance. We believe that assessing all data in the same direction will simplify the interpretation of State performance with regard to the national data.

Although there was general support from the field for the proposed measure of recurrence of maltreatment, some respondents suggested that the measure be restricted to maltreatment recurrence involving the same perpetrator and the same type of abuse. ACF decided not to make this change because children should be protected from continued maltreatment within a 6-month period even if the perpetrator is the mother in one incident, for example, and the father or grandmother in another incident, or if the perpetrator is the same but the maltreatment is neglect in one incident and physical abuse in another.

Respondents also questioned whether and, if so, how the measure of recurrence will incorporate maltreatment allegations that are referred for an ''alternative response.'' Alternative response usually refers to the practice implemented by several States in which a maltreatment allegation that is believed to involve low risk of harm to the child is referred to an agency for an assessment to determine whether the family is in need of services. In these situations, the allegation is not referred for a formal child abuse and neglect investigation. We determined that it is not possible to include maltreatment allegations that are referred for an alternative response in the measure of maltreatment recurrence because the majority of States that implement this approach do not make a disposition as to whether the allegation is substantiated or indicated.

Although respondents to the initial **Federal Register** notice also expressed support for the measure of maltreatment of children in foster care by foster parents or facility staff members, some suggested that the measure include maltreatment by relative caregivers. It already does this. The maltreatment in foster care measure includes perpetrators who are relative foster parents, non-relative foster parents, and group home or residential facility staff. It does not include perpetrators who are relative caregivers taking care of children who are not in foster care. NCANDS's current definition of ''foster parent'' is ''an individual licensed to provide a home for orphaned, abused, neglected, delinquent, or disabled children, usually with the approval of the government or a social service agency. This individual may be a relative or a non-relative.''

The final two measures to be associated with the assessment of CFSR Safety Outcome 1 represent those that remained after we excluded the other measures initially proposed in the **Federal Register** notice. ACF decided to exclude the other proposed measures based on feedback from the field and the results of our review of the data and our data analyses. The measures excluded and reasons for exclusion are described below:

- Measure of multiple unsubstantiated maltreatment allegations. In the November 7th **Federal Register** notice, ACF proposed a safety-related measure assessing the performance area of multiple unsubstantiated maltreatment reports. This was based on the findings of several research studies indicating that many children who are the subject of multiple unsubstantiated allegations actually experience maltreatment. However, almost all respondents recommended eliminating this performance area from the CFSR assessment. They noted that the measure is problematic because of State variations in practices and procedures relevant to substantiation. A particular concern was that many States do not differentiate in their dispositions between unsubstantiated allegations and allegations that are found to be intentionally false or without merit. Consequently, there would be no way to exclude the latter types of allegations from the assessment in all States.
- Measure of timeliness of initiating investigations of maltreatment allegations. In the **Federal Register** notice, ACF proposed a measure of timeliness of initiating investigations of maltreatment allegations, with initiation defined as establishing face-to-face contact with the child who is the subject of the allegation and with the family. The measure was designed to address the proposition that investigations that are initiated quickly are more likely to ensure the safety of children than investigations that are not initiated quickly. We decided to exclude this measure primarily because the results of our data analyses did not support its inclusion and because it was not clear from the data that States were defining either the starting point (*i.e.*, receipt of the allegation) or the end point (*i.e.*, initiation of investigation) of the proposed measure in a consistent manner. In addition, most respondents expressed concern that such a measure would result in the Federal government setting policy for the States with regard to timeliness of initiating an investigation.[3] However, because timeliness of investigations will continue to be part of the CFSR case review assessment, we have decided to provide data relevant to State performance in this area in the State Data Profile without an associated national standard. We will require that States address their performance in this area in their Statewide Assessment.
- Measure of timeliness of dispositions of maltreatment reports.

[3] Some respondents raised concern that the proposed timeliness to investigation measures did not reflect the prioritization and classification systems based on the perceived risk of harm to the child that some States have developed for establishing timeframes for responding to maltreatment allegations.

ACF initially proposed this measure because of our concern that a child welfare agency may not be able to address the safety of the child fully until an investigation is completed and a disposition is made. We decided to exclude the measure from the composite analysis because the majority of respondents indicated that State child welfare agencies are able to provide the necessary services and conduct adequate safety and risk assessment prior to a formal disposition, and that often a disposition is a court decision that is made after the agency has already intervened with the family to ensure safety and address risk issues.

• Measure of maltreatment of children in foster care by their parents. We proposed this measure as a result of an unanticipated finding in our initial data review that for many of the children who were reported as being victims of maltreatment when they were in foster care, the perpetrator was identified as the parent. However, almost all respondents to the **Federal Register** notice expressed concern that because States report to NCANDS the report date rather than the incident date of a maltreatment allegation, the measure would capture incidents of maltreatment by parents that were received while the child was in foster care but that actually occurred before the child entered foster care. We initially attempted to address this problem by excluding from the measure reports received during the first 30 days that a child was in foster care. However, respondents did not agree that this would be sufficient to resolve the problem. Although NCANDS now includes a data element that asks States to report the date of the maltreatment incident as well as the date the report was received, States are not yet using that data element on a consistent basis. ACF has decided to report data on this measure to the States in the State Data Profile. We believe that States may not be aware of the extent of this problem and that by providing these data we will encourage them to use the NCANDS data element pertaining to the date of the maltreatment incident to assess whether children are victims of maltreatment by their parents while they are in foster care.

B. CFSR Composites and Measures That Will Be Used as Part of the Assessment of a State's Substantial Conformity With CFSR Permanency Outcome 1—Children Have Permanency and Stability in Their Living Situations

Four data composites will be used as part of the assessment of State performance in achieving CFSR Permanency Outcome 1. A *composite* reflects the general domain that is assessed by the data. The four composites are: Permanency Composite 1: Timeliness and permanency of reunifications; Permanency Composite 2: Timeliness of adoptions; Permanency Composite 3: Achieving permanency for children in foster care for extended periods of time; and Permanency Composite 4: Placement stability. Information pertaining to construction of the composites is provided in attachment B.

Each composite comprises one or more *components*, depending upon the results of the data analysis. Components are the general factors that contribute to the composite score. If a composite has two components, each one contributes 50 percent to the composite score. If a composite has three components, each one contributes 33.3 percent to the composite score.

Each component comprises one or more *measures.* The measures provide the actual data for the analysis. The contribution of each measure (also called the weight) to the component score is determined by the principal components analysis and is presented in attachment B. The general structure of each composite with regard to the number of components and the number of measures, a summary of the data for each measure, and the national standards are presented in table 1.

1. Permanency Composite 1: Timeliness and Permanency of Reunifications

The principal components analysis of the measures proposed for this composite yielded a composite comprised of two components. One component pertains to timeliness of reunifications. This component includes three measures. The other component pertains to the permanency of reunifications and includes one measure. Each component has a unique score and contributes 50 percent to the final composite score. Information regarding the contributions of individual measures to the component score is provided in attachment B. Composite scores represent the conversion of z-scores to a scale ranging from 50 to 150.

Component 1: Timeliness of Reunification

For the CFSR data measures, reunification occurs if the child is reported to AFCARS as discharged from foster care and the reason for discharge is either ''reunification with parents or primary caretakers'' or ''living with other relatives.'' The score for the timeliness of reunification component of Permanency Composite 1 was derived from State performance on the following measures:

• *Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home?* In calculating this measure, the following children are included in the numerator: (1) Children who were discharged from foster care to a reunification in less than 12 months from the date of removal from home; and (2) children who were discharged from foster care to a reunification who were reported to AFCARS as being placed in a Trial Home Visit in less than 11 months from the date of removal from the home and who remained in that placement until discharge from foster care to reunification.

• *Of all children exiting foster care to reunification in 2004 who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the most recent entry into foster care until the date of reunification?* For this measure, the length of stay in foster care of a particular child was assessed in two ways: (1) The length of stay in months from the date of removal from the home to the date of discharge from foster care to reunification; or (2) the length of stay in months from the date of removal from the home to the date that the child was reported to AFCARS as being placed in a Trial Home Visit, if the trial home visit lasted longer than 30 days and was the last placement setting before the child's eventual discharge from foster care. The score for this measure was adjusted to reflect a positive direction with higher scores indicating higher performance. This is explained further in attachment B.

• *Of all children entering foster care for the first time in the second 6 months of FY 2003 who remained in foster care for 8 days or longer, what percent were reunified in less than 12 months of the date of entry into foster care?* In calculating this measure, the following children are included in the numerator: (1) Children who entered foster care in the second 6 months of FY 2003 who were discharged from foster care to reunification in less than 12 months from the date of entry into foster care; and (2) children who entered foster care in the second 6 months of FY 2003 who were reported to AFCARS as being placed in a Trial Home Visit in less than 11 months from the date of entry into foster care and remained in the trial home visit until discharge to reunification.

The contribution (weight) of each of these measures to the component score is determined by the coefficient resulting from the principal components analysis. The actual score is multiplied by the coefficient to achieve the actual score. This is explained further in attachment B.

Component 2: Permanency of Reunification

The score for the permanency of reunification component of this composite was derived from State performance on the following measure:

- Of all children exiting foster care to reunification in FY 2003, what percent re-entered foster care in less than 12 months?

As noted above, the score for this measure contributes 50 percent to the final composite score. The actual score for this measure was adjusted to reflect performance in a positive direction so that a higher score reflects higher performance. This is explained further in attachment B.

Key Features of the Components and Measures

Adjustments to the Measures

As indicated in the information above, all measures assessing the timeliness of reunification component are adjusted to exclude children who were not in foster care for 8 days or longer. The calculation of the measures also is adjusted to include children who are placed in a trial home visit prior to discharge from foster care to reunification if the trial home visit meets specific conditions (as noted in the description of the calculation of the measures above). Most respondents to the **Federal Register** notice who commented on these adjustments expressed support for them.

ACF proposed that the measure of timeliness of reunification should include only children who were in foster care for 8 days or longer in order to address variation in State practices and policies concerning the placement of children in very short term foster care. We believe that for the most part, the kinds of case practices and agency efforts necessary to achieve a timely reunification for a child who has been removed from home and placed in foster care are not usually applicable for these very short-term placements. Initially, we also proposed a measure that required that a child be in foster care for 30 days or longer in order to be included in the analysis. This measure was eliminated from the composite after the principal components analysis revealed a very high correlation between the 30-day and 8-day adjustment measures, suggesting that the measures capture the same information. In addition, there was more support among respondents to the **Federal Register** notice for the 8-day measure than there was for the 30-day measure. To assist States in understanding how this adjustment impacts their performance, we will provide data in the State Data Profile regarding the percentage of children entering foster care in a fiscal year who are discharged from foster care in less than 8 days after the date of removal from the home.

ACF initially proposed the trial home visit adjustment to the measures of timeliness of reunification in order to address variations in State policy regarding returning children to their families (parents, relatives, or other caretakers) for a period of time before a discharge from foster care. This practice often is referred to as ''physical reunification'' to distinguish it from a reunification in which custody is transferred to the parents or relatives. For the most part, the purpose of this practice is to monitor and assist families in the reintegration process. This practice may be required in State statute, written into agency policy, or reflect standard case practice in a State.

Many respondents recommended that for purposes of the CFSR, ACF should consider ''physical reunification'' as equivalent to a discharge from foster care to reunification. We are unable to do this because the CFSR data profile considers children as reunified only if there is a discharge from foster care and if the discharge reason reported to AFCARS is ''return to family'' or ''live with relatives.'' Once discharged, the child is no longer reported to AFCARS, unless the child re-enters foster care. There is no data element in AFCARS that would allow us to know specifically that a child has been physically reunified.

We believe that the trial home visit adjustment we have made to the measures of timeliness of reunification captures information about the time in foster care of most children who were physically reunified prior to an actual discharge from foster care. States that return children to their families prior to discharge usually report them as being in a ''Trial Home Visit,'' which is one of the placement categories in AFCARS, although they may not actually consider the placement a ''trial.'' Through a review of the data, we determined that a trial home visit placement of longer than 30 days that resulted in an eventual discharge to reunification captures the vast majority of instances that may be considered ''physical reunification.'' Therefore, we incorporated into the measure the time span from the date of entry into foster care to a placement in a Trial Home Visit (as reported in AFCARS) that was longer than 30 days and that was the final placement before the child was discharged from foster care with a discharge reason of return to family or live with relatives.

Timeframe for Reunification

Several respondents expressed concern that most of the measures proposed for this composite continue to focus on 12 months as the appropriate time period for assessing timeliness of reunification. These respondents suggested that a 12-month timeframe is not sufficient in many cases to achieve reunification, particularly for families in which parental substance abuse was a key reason for a child's removal from the home. They noted that 12 months is not sufficient for a parent to receive and complete substance abuse treatment services. These respondents recommended that the timeframe be extended to either 18 or 24 months to reflect the reality of many of the families whose children are in foster care.

ACF acknowledges that it is not always feasible or desirable for all children to be reunified with their families in less than 12 months and we have no expectation that this goal will be accomplished for 100 percent of the children who are eventually reunified. However, we believe that the focus of the measure on reunifications occurring in less than 12 months emphasizes the responsibility of child welfare agencies to return children to safe homes as quickly as possible. This includes working quickly and intensively with parents with difficult issues such as substance abuse to address the problems that resulted in the child's removal from home. In addition, we have incorporated a measure of median length of stay in foster care to reunification that does not specify a 12-month timeframe.

Inclusion of Three Measures in the Timeliness of Reunification Component

Several respondents to the **Federal Register** notice suggested that the measure of reunification that follows an entry cohort of children is sufficient to capture State performance with regard to timeliness of reunification. They expressed the opinion that other measures of timeliness are not necessary, and in fact, are not valid in assessing timeliness. From the beginning of this process, ACF determined that the decision regarding the measures to be incorporated in the

composite would be based primarily on the empirical results of the principal components analyses. For the timeliness of reunification component, the results of the analysis revealed that, although there is overlapping information, each of the three measures chosen for the composite makes a substantial contribution to explaining the variation in performance regarding timeliness (*see* attachment B for the results of the analysis). For example, the entry cohort measure only captures information about children who enter foster care in the second 6 months of the year who are reunified in less than 12 months of the time of entry into foster care. It does not provide information about what happens to the children who are not reunified in that time frame. As indicated in table 1, the median across States for the percentage of children entering foster care in the second six months of a fiscal year who are reunified in less than 12 months is 35.1 percent. This indicates that there are substantial numbers of children who are not reunified in less than 12 months of entering foster care. Although no measure is ideal, we believe that by combining all three measures in the timeliness of reunification component we are able to incorporate a broader picture of State performance with regard to reunifying children in a timely manner than we are able to capture with any single measure.

We acknowledge, however, that an entry cohort approach would be able to capture a wider range of information if each entry cohort for each year could be followed for several years. Although the timeframe for the CFSR precludes this type of analysis, it is possible for a State to use a multiple year entry cohort analysis to assess its own performance and progress. We also are aware that there are statistical procedures available to estimate the percentage of children entering foster care who are likely to be reunified within various timeframes. However, because the CFSR can result in penalties for a State, ACF determined that estimates of performance with regard to achieving particular outcomes are not appropriate. Most respondents to the **Federal Register** notice agreed with this determination and did not want the CFSR to use measures requiring statistical projections.

Inclusion of a Measure of Foster Care Re-Entry As Part of the Reunification Composite

As noted in the **Federal Register** notice, ACF proposed that State performance with regard to children re-entering foster care in less than 12 months of a prior foster care episode would be incorporated into the composite assessing the timeliness and permanency of reunification. In the first round of the CFSR, the re-entry measure was assessed separately from the timeliness of reunification measure. Although ACF believes that it is important to reunify children with their families as quickly as possible, we also believe that children should not be reunified until sufficient changes are made to prevent the child being removed from the home again. The majority of respondents supported the inclusion of a measure of foster care re-entry as part of a single composite assessing the timeliness and permanency of reunification.

In addition, the measure of foster care re-entry that was used in the first round of the CFSR has been revised to reflect a longitudinal analysis. The new measure follows children who exited foster care to reunification in one year to identify the percentage who re-enter in less than 12 months of the time of exit. All respondents commenting on this measure indicated support for this change.

2. Permanency Composite 2: Timeliness of Adoptions

The principal components analysis of the performance measures proposed for the timeliness of adoption composite yielded three components. One component pertains to the timeliness of adoptions of children exiting foster care to adoption. The second component assesses progress toward adoption of a cohort of children who have been in foster care for 17 months or longer and therefore meet the ASFA time-in-foster care requirements regarding the State filing for a termination of parental rights and pursuing adoption unless there is an exception.[4] This may be found in section 475(5)(E) and (F) of the Social Security Act. The third component pertains to the timeliness of adoptions of a cohort of children for who are ''legally free'' for adoption. Legally free means that there is a termination of parental rights for each of the child's living parents.

Each component has a unique score and each contributes 33.3 percent to the final composite score. The contribution of the individual measures to the score for each component is determined by the results of the principal components analysis, as explained further in attachment B. Data pertaining to the composite score and individual measures are presented in table 1.

Component 1. Timeliness of Adoptions of Children Exiting Foster Care

The score for the component pertaining to timeliness of adoptions of children exiting foster care was derived from performance on the following measures:

- Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent was discharged in less than 24 months from the date of the latest removal from the home?
- Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the date of removal from the home to the date of discharge? The actual score for this measure was adjusted to reflect performance in a positive direction so that a higher score reflects higher performance. This is explained further in attachment B.

The contribution of each of these measures to the component score is provided in attachment B.

Component 2. Progress Toward Adoption of Children Who Have Been in Foster Care for 17 Months or Longer

The score for the component assessing progress toward adoption of a cohort of children who meet the ASFA time-in-foster care requirements was derived from performance on the following measures:

- Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent was discharged from foster care to a finalized adoption before the end of the fiscal year?
- Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption in less than 6 months from the beginning of the fiscal year?

The contribution of each of these measures to the component score is provided in attachment B.

[4] ASFA requires State child welfare agencies to file a petition to terminate parental rights and pursue adoption for a child who has been in foster care for 15 of the most recent 22 months, unless an exception exists. A 17-month rather than a 15-month timeframe was chosen for the measure because, in accordance with ASFA, a child is considered to have ''entered foster care'' (for purposes of starting the clock for the 15 of 22 months) on the earlier of:

(1) the first judicial finding that the child has been subjected to abuse and neglect, or

(2) the date that is 60 days after the date on which the child is removed from the home.

The 17 month time frame in the measure is used because AFCARS does not collect information pertaining to the date of the first judicial finding.

Component 3: Timeliness of Adoptions of Children Who Are Legally Free for Adoption

The score for the component assessing timeliness of adoptions for children who are legally free for adoption was derived from performance on the following measure:

• Of all children who became legally free for adoption during FY 2003, what percent were discharged from foster care to a finalized adoption in less than 12 months of becoming legally free?

Key Features of Components and Measures

The timeliness of adoption composite does not include an entry cohort measure.

Several respondents to the **Federal Register** Announcement expressed concern that the proposed timeliness of adoptions composite did not include an entry cohort measure—that is, a measure that follows children longitudinally from the date of entry into foster care to the date of the finalized adoption. As noted in the November 7th Announcement, in determining appropriate measures to test for the composite, our review of the data indicated that an entry cohort approach to assessing the timeliness of adoptions is not feasible within the timeframes of the CFSR. The reasons for this, which were indicated in the **Federal Register** notice, are the following:

• *An extensive timeframe is required to follow a cohort of children from entry into foster care to a finalized adoption and the timeframe is not consistent with the CFSR timeframes.* For example, in following a cohort of children entering foster care in FY 2001, meaningful data pertaining to adoptions did not emerge until 3 years after the entry year.

• *Because not all children entering foster care will be adopted, and because the number of children waiting to be adopted changes each year, it is not possible to establish a stable denominator for an entry cohort measure pertaining to timeliness of adoptions.* In following the FY 2001 cohort, for example, we found that the denominator for assessing adoptions changed on an ongoing basis as children in the original cohort were reunified or exited foster care for other reasons.

• *Although it is possible to apply statistical methods to historical data and estimate the ''likelihood'' of children who enter foster are in a given year being adopted within particular timeframes, ACF cannot use statistical projections to assess CFSR performance because of the potential for financial penalties associated with CSFR performance.*

A few respondents suggested that the assessment of timeliness of adoptions used by the CFSR will not be meaningful without an entry cohort measure. However, we believe that the measures and components for this composite that resulted from the principal components analysis provide a comprehensive picture of State performance with regard to the timeliness of adoption and capture meaningful information. Furthermore, we believe that the three longitudinal measures of progress toward adoption that were incorporated into the composite follow a cohort of children but have a more stable denominator than an entry cohort measure and a timeframe that is consistent with the CFSR.

Measures of Timeliness of Adoption of Children Discharged From Foster Care to a Finalized Adoption

The measure assessing the percent of adoptions occurring in less than 24 months of a child's entry into foster care is identical to the adoption-related data measure used in the first round of the CFSR. Support for this measure from the field was mixed. Some respondents expressed strong support for the measure, while others suggested that it be replaced by an entry cohort measure. Respondents expressed similar differences of opinion regarding the measure of the median length of stay of children discharged from foster care to adoption. In general, the measures are intended to focus on timeliness of adoption by considering children who have already experienced that outcome. One measure does this by focusing on a specific timeframe (*i.e.*, 24 months), while the other addresses the range of possible time periods, with a focus on the median time in foster care. The results of the principal components analysis indicate that taken together, these two measures account for a large percentage of the variation in State performance with regard to the timeliness of adoptions of a cohort of children who have exited foster care to adoption.

Longitudinal Measures of a Cohort of Children Who Have Been in Foster Care for 17 Months or Longer

The two measures that follow the progress toward adoption of a cohort of children who have been in foster care for 17 months or longer are intended to address the ASFA time-in-foster care requirement for States to file for a termination of parental rights and pursue adoption unless there is an exception. Several respondents to the **Federal Register** notice suggested that many children who have been in foster care for 17 months or longer will exit foster care to a permanency option other than adoption or will meet the exceptions noted in ASFA. They recommended, therefore, that these measures be limited to children who have a case goal of adoption.

After consideration of this request, ACF decided to maintain the denominator for these measures as all children in foster care for 17 months or longer at the start of the fiscal year. We acknowledge that many of the children in foster care for 17 months or longer at the start of the fiscal year may be discharged from foster care with a discharge reason other than adoption. In addition, we know that some children who are in foster care for 17 months or longer are likely to meet the criteria for an exception to the ASFA requirement. However, if we include in the measure only children who have a goal of adoption reported to AFCARS, we will miss those children who have other goals, but for whom adoption needs to be considered because of the length of time they have been in foster care and because they do not meet the criteria for an exception. Also, if we include in the measure only children who have a goal of adoption reported to AFCARS, we will miss those children for whom the agency is working toward adoption, but has not yet reported a goal change to AFCARS.

The results of our data analyses indicate that the percentages regarding State performance on these measures are sufficiently low to ensure that States are able to be flexible with regard to meeting the unique needs of the children they serve. In fact, very small percentages of children in care for 17 months or longer at the start of the fiscal year become legally free for adoption within 6 months (median = 9.0 percent) or are adopted by the end of the fiscal year (median = 18.0 percent). As with all other data measures used for the CFSR, there is no expectation that a State achieve a particular goal for 100 percent of the children who are included in the denominator of a specific measure. However, ACF believes that the ASFA requirement regarding the State filing a TPR and pursuing adoption, unless there is an exception, reflects a national concern that State child welfare agencies make concerted efforts to ensure that children who cannot be reunified are legally freed for adoption and adopted as quickly as possible.

Longitudinal Measure of the Percent of Children Who Become Legally Free for Adoption in a Given Year Who Are Adopted in Less Than 12 Months of Becoming Legally Free

Although respondents to the initial **Federal Register** notice generally supported this measure, a few expressed concerns about the accuracy of information reported to AFCARS regarding termination of parental rights. Our review of the data indicated that there are a few States that do not appear to report information about termination of parental rights to the AFCARS Foster Care File, or who report this information for only a very few children. However, most States appear to be reporting this information fairly consistently, although they may not be reporting it in all instances. We believe that the problem of inconsistencies can be resolved by States improving their reporting to AFCARS on the data elements pertaining to termination of parental rights.

3. Permanency Composite 3: Achieving Permanency for Children in Foster Care

The principal components analysis of the performance measures proposed for the composite addressing achieving permanency for children yielded two components. One component pertains to achieving permanency for children in foster care for long periods of time, and the other pertains to the issue of children growing up in foster care and exiting to emancipation. A State's score for each component contributes 50 percent to the State's total score for this composite. As noted for the other composites, the scores for the individual components are derived from the contribution of each of the measures to the component, as determined by the coefficient resulting from the principal components analysis.

Component 1: Achieving Permanency for Children in Foster Care for Extended Periods of Time

The score for the component pertaining to achieving permanency for children in foster care for long periods of time was derived from performance on the following measures:

- Of all children who were discharged from foster care in FY 2004 who were legally free for adoption (*i.e.*, there was a TPR for each living parent), what percent were discharged to a permanent home prior to their 18th birthday, with a permanent home defined as having a discharge reason of adoption, reunification (including live with relative), or guardianship?
- Of all children who were in foster care for 24 months or longer on the first day of FY 2004, what percent were discharged from foster care to a permanent home prior to their 18th birthday and by the end of the fiscal year?

Component 2: Children Growing Up in Foster Care

The score for the component addressing children growing up in foster care was derived from performance on the following measure:

- Of all children who were emancipated from foster care or reached their 18th birthday while in foster care, what percent had been in foster care for 3 years or longer?

In AFCARS, emancipation is defined as ''the child reached majority according to State law by virtue of age, marriage, etc.'' The actual score for this measure was adjusted to reflect performance in a positive direction so that a higher score reflects higher performance. This is explained further in attachment B.

Key Features of the Composite, Components, and Measures

Inclusion of Guardianship in the Assessment of Achieving Permanency

A key feature of this component is that guardianship is included as one of the permanency options in two of the measures. Several respondents to the November 7th **Federal Register** notice expressed concern that the CFSR data measures do not assess State performance with regard to achieving guardianship as a permanency option. In response to this concern, ACF analyzed the data for guardianship and found that, nationally, only a very small percentage of children are discharged from foster care to guardianship. In several States, no children are discharged from foster care to guardianship, suggesting that guardianship is not a permanency option in these States. These small numbers did not permit a separate composite or measure focusing on timeliness of achieving guardianship. However, because we recognize that many States have made concerted efforts to achieve permanency for children through guardianship, we included guardianship as a permanency option in the two measures that assess achieving permanency for children.

Longitudinal Analysis of a Cohort of Children in Foster Care for 24 Months or Longer

Many respondents expressed concern that most of the existing measures pertaining to adoption and reunification do not capture general permanency information for children in foster care for a relatively long period of time. In response to this concern, ACF developed a measure to assess discharges to permanency of children in foster care for 24 months or longer. The 24 month period was chosen because, nationally, about 50 percent of the children in foster care on any given day have been in foster care for about 2 years or longer. The new measure allows an assessment of what happens to these children in a 12-month time period.

Addressing Concerns Regarding ''Legal Orphans''

The measure of achieving permanency for children who are discharged from foster care and who were legally free for adoption at the time of discharge addresses the concern of the field that by pursuing termination of parental rights for children who have been in foster care for 15 of the most recent 22 months, the field may be creating ''legal orphans,'' that is, children who have no legal parents and for whom no permanent home is found. The data for this measure suggest that the vast majority of children who are discharged from foster care prior to their 18th birthday and who are legally free for adoption are discharged to a permanent home (including guardianship, adoption, and reunification). However, despite the large percentages, ACF decided to maintain the measure because it is important for States to make concerted efforts to ensure permanency for all children for whom a termination of parental rights has been granted for each living parent.

Addressing the Issue of Children Emancipated From Foster Care After Many Years in Foster Care

One objective of ASFA was to ensure that child welfare agencies make concerted efforts to ensure that children do not spend many of their childhood years in foster care, only to leave foster care without having found a permanent home. Our initial measure to address this concern focused on the percentage of children emancipated from foster care or reaching their 18th birthday while in foster care who entered foster care when they were age 12 or younger. However, a few respondents noted that this measure was more likely to reflect the variation among States with regard to the ages of children at the time of entry into foster care than it was to capture the general issue of children growing up in foster care. In response to this concern, we revised the measure to focus on the length of time in foster care of children emancipated from foster care rather than the age at entry into foster

care. Due to our criteria of having been in foster care for 3 years or longer, the revised measure excludes children who exit to emancipation who entered foster care at approximately age 15 or older. This addresses a large portion of the variation among States with regard to the age of children at the time of entry into foster care.

4. Permanency composite 4: Placement stability

The principal components analysis for this composite yielded one component that incorporates the following three measures:

- Of all children in foster care in FY 2004 who were in foster care for 8 days or longer and less than 12 months, what percent had two or fewer placement settings?
- Of all children in foster care in FY 2004 who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings?
- Of all children in foster care in FY 2004 who were in foster care for 24 months or longer, what percent had two or fewer placement settings?

Data pertaining to the composite score and individual measures are presented in table 1. The contribution of each measure to the composite score is determined by the results of the principal components analysis, as described further in attachment B.

Key Features of Composite and Measures

This composite includes one measure that is similar to the measure of placement stability used in the first round of the CFSR—placement stability for children who have been in foster care for less than 12 months. The one revision to this measure is that it includes only children who have been in foster care for 8 days or longer. We made this revision in response to concerns expressed by respondents regarding including children in foster care for very short periods of time in the measure of placement stability. However, if a child is in care for 8 days or longer, the placement changes that occurred during the first 8 days in foster care are considered in the measure. Two additional measures were added to the composite to address the issue of placement stability for children in foster care for longer periods of time. ACF believes that placement stability is as important to the well-being of children in foster care for 2 years or longer as it is for children who have been in foster care for only a few months. Most respondents to the **Federal Register** notice expressed support for this composite and the measures. However, respondents raised the following concerns regarding the measures:

- *The measures do not define what constitutes a placement change.* This issue has been raised in the past regarding reporting placement changes to AFCARS. Clarification was issued to the States in CWPM 1.2B.7.
- *The measures do not capture variations with regard to time in foster care.* Respondents noted that the children included in the measure who were in care for less than 12 months could have been in care for only a few weeks or for several months. In response to this concern, ACF examined alternative approaches to this measure, including an entry cohort approach.

However, unless a measure specified that all children were in foster care for a specified time period, all of the approaches considered had the same problem. For example, we could address this problem if we included in the measure only children who were in foster care for at least 11 of the 12 months. However, this does not capture the issue of placement stability for children who are in foster care for short periods of time. Our review of the data indicated that these children can experience multiple placements as well as those children in foster care for longer periods of time. Consequently, we have maintained the measure as proposed with the exclusion of children who were in foster care for less than 8 days.

- *ACF should expand the definition of placement stability from two placement settings to three placement settings for children who have been in foster care for longer than 12 months and for older children because two placement settings is not a realistic measure of placement stability for these children.* In developing the outcome measures for the Annual Report to Congress on Child Welfare Outcomes, ACF engaged in a broad-based consultation process with stakeholders in the field, including representatives from State and county child welfare agencies, child advocacy organizations, and child welfare researchers. With regard to the outcome measure pertaining to placement stability, ACF, based on input from these stakeholders, established a definition of placement stability as a child experiencing two or fewer placement settings. The decision to have two placement settings in the definition instead of one was based on the following: (1) often it is difficult to determine the most appropriate placement setting at the time of the child's initial removal from home; and (2) in many States, children are placed in a shelter type placement for a short period of time in order to assess the needs of the child and determine the most appropriate placement. We have decided not to increase the number of placement settings in our definition of placement stability for any of the measures. One reason for this is that our existing definition was established in consultation with key stakeholders in the child welfare field. In addition, placement stability is a critical component of the well-being of children in foster care. States are responsible for ensuring that children who are removed from their homes by the State experience stability while they are in foster care. It is not in the best interest of a child to experience multiple placement settings regardless of the time that the child is in foster care, the child's age, or the reason for the child's entry into foster care.
- *The placement setting information does not capture changes in placement settings that are positive changes.* AFCARS does not have information about whether a placement change reflects a positive move for the child. For example, changing a child's placement in order to move the child closer to the parents to facilitate more frequent visits. It is difficult to assess whether a placement change is positive for the child without contextual information about various factors such as the needs of the child and the existing conditions of the child's placement. For example, a child may change placements because of the death or illness of a foster parent, or because the child is in need of a specific type of treatment. The question of whether a placement change is in a positive direction is addressed in the case review component of the CFSR because more information about the child and the placements is available in that process. As noted previously, although we cannot account for these events in the data measure, we also do not expect that 100 percent of the children in any of the specified time-in-care timeframes will experience no more than two placement settings.

This announcement is intended to provide information about the national data that will be used in the next round of the CFSR as a component of the overall assessment of a State's substantial conformity with two of the seven CFSR outcomes. The attachments to this announcement provide supplementary information regarding the methodology used in developing the data composites.

Dated: June 1, 2006.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

TABLE 1.—RANGE, PERCENTILES, AND NATIONAL STANDARDS FOR THE MEASURES AND COMPOSITES TO BE USED IN THE SECOND ROUND OF THE CHILD AND FAMILY SERVICES REVIEW

Composites and performance measures	Range	Median	National standard
Performance Measures Associated with Performance on CFSR Safety Outcome 1—Children Are, First and Foremost, Protected from Abuse and Neglect			
Of all children who were victims of a substantiated or indicated maltreatment allegation during the first 6 months of FY 2004, what percent were not victims of another substantiated or indicated maltreatment allegation during a 6-month period?	86.0–98.0	93.5	95.2 or higher.
Maltreatment of children in foster care: Of all children in foster care in FY 2004, what percent were not victims of a substantiated or indicated maltreatment by a foster parent or facility staff member?	99.07–100	99.68	99.67 or higher.
Composites, Components, and Performance Measures Associated with Performance on CFSR Permanency Outcome 1—Children Have Permanency and Stability in Their Living Situations			
Permanency Composite 1: Timeliness and Permanency of Reunification			
Scaled Scores for the Timeliness and Permanency of Reunification Composite incorporating two components and four measures.	50–150	96.1	106.7 or higher.
Component A. Timeliness of reunification:			
Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the time of the latest removal from home? (This includes the Trial Home Visit adjustment.).	44.2–88.8	69.5	No Standard.
Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what was the median length of stay from the time of the most recent entry into foster care until discharge to reunification (in months)? (This includes the Trial Home Visit adjustment.)	2.0–13.7	6.5	No Standard.
Of all children entering foster care in the first 6 months of FY 2004 who remained in foster care for 8 days or longer, what percent were discharged from foster care to reunification in less than 12 months of the time of entry into foster care? (This includes the Trial Home Visit adjustment.)	15.7–65.4	35.3	No Standard
Component B. Permanency of reunification:			
Of all children discharged from foster care to reunification in FY 2003, what percent re-entered foster care in less than 12 months?	1.6–29.5	14.8	No Standard.

Composites, commponents, and performance measures	Range	Median	National standard
Permanency Composite 2: Timeliness of Adoptions			
Scaled scores for the Timeliness of Adoptions Composite incorporating three components and five measures.	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent was discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9	27.1	No Standard.
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7	32.0	No Standard.
Component B: Progress Toward Adoption for Children Who Meet ASFA Time-in-Care Requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1	18.0	No Standard.
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2	9.0	No Standard
Component C: Progress Toward Adoption of Children Who Are Legally Free for Adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2	43.7	No Standard.
Permanency Composite 3: Achieving Permanency for Children in Foster Care			
Scaled scores for the Achieving Permanency Composite incorporating two components and three measures.	50–150	98.6	105.2 or higher.

Composites, commponents, and performance measures	Range	Median	National standard
Component A: Achieving Permanency for Children in Foster Care for Extended Periods of Time			
Of all children who were discharged from foster care and were legally free for adoption (i.e., there was a TPR for each living parent), what percent exited to a permanent home defined as adoption, guardianship, or reunification prior to their 18th birthday?	84.6–100.0	96.8	No Standard.
Of all children in foster care for 24 months or longer at the start of the fiscal year, what percent were discharged to permanency in less than 12 months and prior to their 18th birthday?	8.0–35.2	24.6	No Standard.
Component B: Children Emancipated Who Were in Foster Care for Extended Periods of Time			
Of all children who exited foster care with adischarge reason of emancipation or who reached their 18th birthday while in foster care, what percent were in foster care for 3 years or longer?	17.5–80.4	50.6	No Standard.

Composites, components and measures	Range	Median	National standard
Permanency Composite 4: Placement stability			
Scaled scores for the Placement Stability Composite incorporating three measures	50–150	102.0	108.2 or higher.
Of all children in foster care for 8 days or longer and less than 12 months, what percenthad two or fewer placement settings?	64.7–97.1	82.4	No Standard.
Of all children in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings?	37.0–82.3	59.5	No Standard.
Of all children in foster care for at least 24 months, what percent had two or fewer placement settings?	14.1–53.8	33.4	No Standard.

Attachment A: List of Data To Be Included in the State Data Profile

Prior to development of the Statewide Assessment for the CFSR, each State will receive a State Data Profile. This profile will continue to include the information that was provided in the first round of the CFSR. It also will include new information regarding composite scores, the measures for the composites, and additional information relevant to the composites. This attachment provides a list of the general kinds of data that will be provided to States in the State Data Profile. Additional information may be added to the State Data Profile at a later date. Most of the data will be provided for 3 years. However, the States to be reviewed in the first year of the CFSR will have only 2 years of data for each of the composites and composite measures.

Descriptive Information

Descriptive Information Currently Included in the State Data Profile

A. Descriptive Information From the National Child Abuse and Neglect Data System (NCANDS)

1. The number of reports alleging maltreatment of children that reached a disposition within the reporting year; the total numbers of reports, and the number of unique children associated with reports alleging maltreatment.

2. The numbers and percentages of reports that were given a disposition of ''Substantiated and Indicated,'' ''Unsubstantiated,'' and ''Other.''

3. The numbers and percentages of child cases opened for services, which is based on the number of victims during the reporting period under review.

4. The numbers and percentages of children entering foster care in response to a child abuse/neglect report.

5. The number of child fatalities.

B. Descriptive Information From the Adoption and Foster Care Analysis and Reporting System (AFCARS). (Where Relevant, the Descriptive Data Identified Below Will Be Provided for Both a Point-in-Time Analysis and for a Cohort of Children Entering Foster Care in a Given Year)

1. Number of children in foster care on the first and last day of the fiscal year and number of children entering and exiting foster care in the fiscal year.

2. Placement settings for children in foster care.

3. Case plan goals for children in foster care.

4. Number of placement settings in the current foster care episode.

5. Number of foster care episodes of children in foster care at the end of the fiscal year.

6. Number and percentage of children in foster care for 17 of the most recent 22 months, calculated from the number of all children in foster care on the last day of the fiscal year.

7. The median length of stay (months) in foster care of children in care on the last day of the year.

8. Number of children who discharged to each type of permanency goal and the length of stay in foster care (in months) for those children who discharged to each permanency goal.

New Descriptive Information To Be Included in the State Data Profile

A. New Descriptive Information From NCANDS

1. The mean time from receipt of an allegation of child maltreatment to the initiation of an investigation.

2. The median time from receipt of an allegation of child maltreatment to the initiation of an investigation.

3. The percent of children in foster care who are the subject of a substantiated or indicated maltreatment where the perpetrator is a parent.

B. New Descriptive Information From AFCARS

1. The number and percent of children entering foster care in the fiscal year who were in care for 7 days or less before being discharged from foster care.

2. The number and percent of children exiting foster care in the fiscal year who were in foster care for 7 days or less.

Analytical Information

Analytical Information Currently Included in the State Data Profile

A. Current Analytical Information From NCANDS

1. Maltreatment recurrence: Of all children who were victims of abuse and/or neglect during the first 6 months of the reporting year, the percent that were victims of another abuse or neglect incident within a 6-month period.

2. Maltreatment of children in foster care: Of all children who were in foster care during the reporting year, the percent that were victims of abuse and/or neglect by a foster parent or facility staff member.

B. Current Analytical Information From AFCARS

1. Time to Reunification: For the reporting year, of all children who were reunified with their parents or caretakers at the time of discharge from foster care, the percent that were reunified in less than 12 months from the time of the latest removal from home.

2. Time to Adoption: For the reporting year, of all children who exited foster care to a finalized adoption, the percent that exited foster care in less than 24 months from the time of the latest removal from home.

3. Placement Stability: For the reporting year, of all children served who have been in foster care less than 12 months from the time of the latest removal from home, the percent that have had no more than two placement settings.

4. Re-entry into foster care: Of all children who entered foster care during the reporting year, the percent that re-entered foster care within 12 months of a prior foster care episode.

New Analytical Information To Be Included in the State Data Profile

A. New Analytical Information From NCANDS

1. Maltreatment recurrence: Of all children who were victims of abuse or neglect during the first 6 months of the reporting year, the percent that were *not victims* of another maltreatment within a 6-month period.

2. Maltreatment of children in foster care: Of all children who were in foster care during the reporting year, the percent that were *not victims* of maltreatment by a foster parent or facility staff member.

B. New Analytical Information From AFCARS

1. The composite score for Permanency Composite 1: Timeliness and permanency of reunifications and the national standard for this composite.

2. Data pertaining to actual performance on the measures included in Permanency Composite 1. These are as follows:

- For the reporting year, of all children discharged from foster care to reunification who had been in foster care for 8 days or longer, the percent that met either of the following criteria: (1) The child was reunified in less than 12 months from the date of the latest removal from home, or (2) the child was placed in a trial home visit within 11 months of the date of the latest removal and the child's last placement prior to discharge to reunification was the trial home visit.
- For the reporting year, of all children discharged from foster care to reunification who had been in foster care for 8 days or longer, the median length of stay in months from the date of the most recent entry into foster care until either of the following: (1) The date of discharge to reunification; or (2) the date of placement in a trial home visit that exceeded 30 days and was the last placement setting prior to discharge to reunification.
- For the reporting year, of all children entering foster care in the second 6 months of the year who remained in foster care for 8 days or longer, the percent who met either of the following criteria: (1) The child was reunified in less than 12 months from the date of entry into foster care, or (2) the child was placed in a trial home visit in less than 11 months from the date of entry into foster care and the trial home visit was the last placement setting prior to discharge to reunification.
- Of all children exiting foster care to reunification in the year prior to the reporting year, the percent that re-entered foster care in less than 12 months from discharge from a prior episode.

3. The composite score for Permanency Composite 2: Timeliness of adoptions

4. Data pertaining to State performance on the following measures included in Permanency Composite 2.

- For the reporting year, of all children who were discharged from foster care to a finalized adoption during the year, the percent that were discharged in less than 24 months from the date of the latest removal from the home.
- For the reporting year, of all children who were discharged from foster care to a finalized adoption, the median length of stay in foster care (in months) from the date of removal from the home to the date of discharge to adoption.
- For the reporting year, of all children in foster care on the first day of the year who were in foster care for 17 continuous months or longer, the percent that were discharged from foster care to a finalized adoption before the end of the fiscal year.
- For the reporting year, of all children in foster care on the first day of the year who were in foster care for 17 continuous months or longer, the percent that became legally free for adoption within 6 months from the beginning of the fiscal year.
- For the reporting year, of all children who became legally free for adoption, the percent that were discharged from foster care to a finalized adoption in less than 12 months of becoming legally free?

5. The composite score for Permanency Composite 3: Achieving permanency for children in foster care.

6. Data pertaining to State performance on the following measures included in Permanency Composite 3.

- For the reporting year, of all children who were discharged from foster care who were legally free for adoption (*i.e.*, there was a TPR for each living parent), the percent that were discharged to a permanent home prior to their 18th birthday, with a permanent home defined as having a discharge reason of adoption, reunification (including live with relative), or guardianship.
- Of all children who were in foster care for 24 months or longer on the first day of the reporting year, the percent that were discharged from foster care to a permanent home prior to their 18th birthday and by the end of the fiscal year.
- During the reporting year, of all children who were emancipated from foster care or reached their 18th birthday while in foster care, the percent that had been in foster care for 3 years or longer.

7. The composite score for Permanency Composite 4: Placement stability

8. Data pertaining to the following measures in Permanency Composite 4.

- For the reporting year, of all children in foster care who were in foster care for 8 days or longer and less than 12 months, the percent that had two or fewer placement settings.
- For the reporting year, of all children in foster care who were in foster care for at least 12 months but less than 24 months, the percent that had two or fewer placement settings.
- For the reporting year, of all children in foster care during the year who were in foster care for 24 months or longer, the percent that had two or fewer placement settings.

Attachment B: Methodology for Developing the Composites

After the first round of the Child and Family Services Review, the Administration for Children and Families (ACF) conducted a review of possible additional measures for

assessing State performance with regard to achieving permanency and placement stability for children in foster care.[5] The purpose of the review was to increase the pertinent data used as part of the assessment of a State's substantial conformity with CFSR outcomes. The goal was to enhance the understanding of State performance on the outcomes assessed through the CFSR.

The review of potential measures was guided by a consideration of the following key performance areas reviewed in the CSFR: (1) Timeliness and permanency of reunifications; (2) timeliness of adoptions; (3) achieving permanency for children in foster care for long periods of time; and (4) placement stability. Multiple measures were developed for consideration within each performance area. ACF determined that all measures considered had to meet the following criteria:

• *Measures must include data currently collected through the Adoption and Foster Care Analysis and Reporting System (AFCARS).* For example, although it would be useful to be able to assess such variables as adoption dissolution or the quality of a child's placement, neither type of information is collected through AFCARS. However, ACF encourages State child welfare systems to conduct their own analyses of issues such as these to further understand the outcomes experienced by the children they serve.

• *Measures must meet the timeframe requirements of the CFSR.* Each measure must be able to be assessed consistent with the period under review and the period necessary for assessing progress in the Program Improvement Plan (PIP).

• *Measures must assess outcomes that are consistent with titles IV–B and IV–E of the Social Security Act and the Social Security Amendments of 1994 which authorized the reviews.* While Congress granted ACF the authority to monitor the progress of State child welfare agencies, there are limits to our statutory authority with regard to the CFSR. For example, the authorization for the CFSR does not include monitoring for adherence to the requirements of the Chafee Foster Care Independence Act or to the requirements of the Indian Child Welfare Act.

• *Measures must incorporate an assessment of events that have actually occurred rather than be based on statistical projections of the likelihood of an event occurring sometime in the future.* Although ACF is aware of the statistical procedures that can be used to estimate the likelihood of particular outcomes occurring within particular timeframes, we do not believe that it is appropriate to use these methodologies in the CFSR assessment because there are penalties associated with State performance.

The measures that we developed were presented to the public for comment in a **Federal Register** notice published on November 7, 2005. Based on feedback from the field and additional data analyses, several measures were eliminated from consideration or revised to more effectively capture the intended objectives.

Our initial goal was to expand the information used in the data indicators. However, ACF did not want to increase the complexity of the CFSR by having multiple measures with national standards for each measure. Instead, our goal was to implement a methodology that would allow us to create a set of composite scores, with each composite score reflecting performance on several inter-correlated measures. To assist us in achieving this goal, we hired an internationally known expert statistician as a consultant. After reviewing several possible statistical methodologies, we determined that a Principal Components Analysis (PCA) was the most appropriate approach.

A PCA is a commonly used and widely accepted statistical technique for reducing a large set of variables into a smaller set. The PCA not only combines inter-correlated variables but also identifies those that are redundant because they are very highly inter-correlated. Each variable in the set is given a weight in accordance with its relative contribution to the set as a whole. The resulting principal components are more stable and easier to interpret than individual measures because several individual variables are related to one another. The principal components that result from a PCA can be used as data for other types of statistical analyses, such as survival analysis, discriminant function analysis, and multiple regression analysis.

Although a PCA can be used to test hypotheses or theories, ACF did not use it for this purpose. Instead, we used the PCA as an exploratory tool. In an exploratory PCA, the goal is to describe and summarize data by grouping together variables that are correlated. As noted by Tabachnik and Fidel,[6] PCA is different from factor analysis, which focuses on shared variance among variables. ''In a PCA, all variance in the observed variables is analyzed, including common, unique, and error variance. The resulting components are simply aggregates of existing variables. There is no underlying theory about which variables should be associated with which factors; rather relationships emerge based solely on empirical associations. It is understood that any labels applied to derived components are merely convenient descriptions of the combination of variables associated with them. These labels are intended to describe the critical core outcomes being assessed.''

Using the PCA to Develop Composite Scores for the CFSR

This section presents a discussion of the methodology used to implement the PCA. The definitions of the terms used and the conceptual structure are as follows:

• *Measure.* In the discussion below, this term refers to the variables included in each PCA. Performance on each measure provides the basic data for the PCA. We have used the term measure rather than variable to clarify that it is performance on the specific measures described in this **Federal Register** Announcement that is considered as the focus of analysis.

• *Component:* This term refers to the general factors that comprise a given composite. In our analysis, the number of components in a composite ranges from one to three.

• *Composite:* This term refers to the general performance area assessed, *i.e.*, timeliness and permanency of reunification, timeliness of adoptions, achieving permanency for children in foster care for long periods of time, and placement stability.

• *Results:* This term refers to the output from each data analysis for each composite. That is, the analysis may be said to produce results for each composite.

• *Solution:* This term refers to the overall pattern of results across multiple data analyses.

PCA requires a sample size of 500 or more units to achieve maximum stability in the solution. Therefore, ACF decided from the outset that the unit of analysis would be performance on the measures included in each composite domain at the county rather than at the State level. Because many counties often serve very small numbers of children in foster care, the number of children served in foster care in each of the 2,984 counties was calculated (using the

[5] The same process was conducted for assessing State performance with regard to safety, but based on feedback from the field and the results of our data analyses, no additional safety-related measures were developed.

[6] B.G. Tabachnik and L.S. Fidell (2001). *Using Multivariate Statistics,* Fourth Edition. Boston, Massachusetts: Allyn & Bacon.

FIPScodes).[7] Small counties within a given State were combined (i.e., ''rolled up'') to represent a single ''county'' that served at least 50 children in foster care in FY 2004.[8] This resulted in a total of 2,119 ''counties'' that could possibly be included in the analysis.[9]

Once the ''counties'' were established, the PCA was implemented using the steps described below.

1. Rank-order the counties and assign each county to one of two samples '' Set A or Set B. Using matched-pair sampling, each county was randomly assigned to one of two sets—Set A or Set B. In the matched-pair sampling, counties first were ranked in descending order in terms of ''size,'' with size defined as the number of children served in foster care in the county during the fiscal year. The counties were then paired on the basis of size, with each pair including counties of the same general size. After this matched pairing, each county in the pair was randomly assigned to either Set A or Set B. The result was that Set A and Set B were matched with respect to the size of the counties within each set. The two Sets were not matched on any other variable. We created these two sets in order to cross-validate our PCA results by comparing the solutions resulting in each set.

2. Calculate the performance of each county on each measure. The performance of each county on each measure was calculated using the programming syntax developed for each measure as applied to data reported to AFCARS for FY 2003 and FY 2004.[10] The focus of analysis was on data reported for FY 2004. FY 2003 data were used when more than a 12-month time span was required to calculate the measure.

3. Standardize the scores. The results were standardized by converting the actual score for each county to a z-score. The use of standardized scores rather than actual calculated results allows for variables measured in different units to be included in the analysis. For example, median length of stay in foster care is calculated in months, while reunification within 12 months is calculated in percentages. Standardized scores are helpful for two reasons: (a) All variables are converted to the same scale of measurement, and (b) scores for each variable are normally distributed. The z-scores were adjusted for the direction of the measure. For example, a positive score on one measure can indicate positive performance or negative performance, depending on the focus of the measure. To adjust for this, z-scores for some of the measures were multiplied by -1 to ensure that all scores are interpreted in the same way. That is, the higher the score the better the performance. The following measures were recoded to adjust for direction:

- Median length of stay in foster care of children reunified;
- Median length of stay in foster care of children discharged from foster care to a finalized adoption;
- Percent of children discharged from foster care who re-entered in less than 12 months from the time of exit; and
- Percent of children who emancipated from foster care or who reached their 18th birthday while in foster care who were in foster care for 3 years or longer.

4. Conduct a PCA analysis on Set A and Set B independently. Using the Statistical Packages for the Social Sciences (SPSS) statistical software, we ran the PCA for Set A and Set B separately for each of the four composite areas.

5. Decide what component variables to include for each composite measure. After the initial analyses, we reviewed the results and made decisions regarding the variables to be included in each composite measure in accordance with the standard procedures for conducting a PCA. All decisions were data driven and were nearly identical for both Set A and Set B. For example, when two measures correlated so highly that they appeared to be capturing the same information, we eliminated one of the measures. When one or two measures did not correlate highly with other measures but still appeared to account for a high percentage of the variance in the total composite domain, we considered those as comprising a separate principal component. The goal was to identify components that accounted for as much of the sample variance as possible. That is, we wished to select the minimum number of principal components that would enable us to reproduce the observed correlations among the variables used in the analysis. A set of principal components that explained 100 percent of the variance would reproduce the data perfectly. Generally, identifying one or two principal components that explain 50 percent of the variance is considered very good. Identifying a small set of principal components that explain 70 percent of variance or more is considered excellent.

6. Compare the findings for Set A and Set B. A t-test on means from two independent samples was conducted on the county component scores comparing Set A and Set B for each of the four composites. No significant differences between the Sets were found for any of the composites. The p values exceeded 0.05 for all comparisons. This indicated that the PCA of the two independent samples produced the same results.

7. Create a new data set that incorporates all counties included in Set A and Set B into one data set and replicate the PCA analysis (Steps 2 through 6 above) on the combined data set to generate the Component Score Coefficient Matrix. The PCA generates what is termed a ''component score coefficient'' for each measure. The data analyses may result in a number of principal components, depending on the relationships among the measures as reflected in the component score coefficients. The coefficient represents the ''weight'' for a given measure—that is the relative contribution of the measure to the overall component. The components that emerged from the analyses combining Set A and Set B are presented below for each composite. These components were identical to those that emerged in the separate analyses of Set A and Set B. That is, the same principal components emerge consistently and explain the same proportion of variance. We have established a ''name'' for each component. The name reflects the focus of the measures that have the highest loading on the component. The measure with the highest loading often is referred to as the *marker variable*. The coefficients (or weights) for each measure within each component are provided in table 1. The higher the coefficient, the greater the contribution a particular measure makes to the component.

- Permanency Composite 1—Timeliness and Permanency of Reunification. The analyses for this composite included 1,894 counties. Two components emerged from the analysis of measures included in this composite. The two components explain 73.5

[7] Counties were excluded from the analyses when the State did not report a FIPScode in FY 2004.

[8] ACF determined that the composites and national standards would be developed using data pertaining to FY 2004. This means that, for the second round of the CFSR, the data used to establish the national standards will not be the same as the data used to evaluate performance of any of the States.

[9] The number of counties included in the PCA varies across the composites. This is because a county had to have a value for all of the measures included in a specific composite domain in order to be included in the PCA. For example, if a county did not have any children in foster care for 17 months or longer at the start of the fiscal year, then that county was not included in the PCA for the timeliness of adoption composite because there were two measures in that composite that focus on permanency for children in foster care for 17 months or longer.

[10] The syntax and the aggregated database will be made available to the public.

percent of the variance. We named the first component *timeliness of reunification*, and the second component *permanency of reunification*. Because these components are independent from one another, each contributes 50 percent to the total composite score.

• Permanency Composite 2—Timeliness of Adoptions. The analysis for this composite included 1,453 counties. Three components emerged from the analysis of measures included in this composite. Taken together, these components explain 79.8 percent of the total variance. The first component we named *timeliness of adoptions of children exiting foster care to adoption.* The second component, we named *progress toward adoption for children in foster care for 17 months or longer.* The third component we named *timeliness of adoption of children who are legally free for adoption.* Because these components are independent from one another, each contributes 33.3 percent to the total composite score.

• Permanency Composite 3—Achieving permanency for children in foster care for long periods of time. The analysis for this composite included 1,682 counties. Two components emerged from the analyses of these measures. These components account for 74.9 percent of the total variance. The first component we named *permanency for children in foster care for long periods of time.* The second component we named *children emancipated after being in foster care for long periods of time.* Because the components are independent of one another, each contributes 50 percent to the total composite score.

• Permanency Composite 4—Placement stability. This analysis included 2,119 counties. One component, which we have named *placement stability*, emerged from the analysis of the measures included in this composite. The component accounts for 67.4 percent of the variance.

8. Generate the component scores for each county. For each county included in the analysis, the z-score for each measure (generated under step 3) is multiplied by the coefficient for that measure (shown in table 1), resulting in a ''weighted score'' for each measure within the component. The weighted scores for each measure within a component are then summed. The result is a county component score.

9. Generate the composite scores for each county. The county composite score represents a combination of the component scores. If there is only one component in the composite, then the county composite score and the county component score are the same. If there is more than one component in the composite, then the county composite score is the mean of the scores for each component. For example, if there are two components in a composite, then the county component scores are summed and divided by two to generate the county composite score. If there are three components in a composite, then the county component scores are summed and divided by three to generate the county composite score.

10. Generate the composite scores for each State. The composite score for each State was generated based on the composite scores for each of the counties in the State. Within a given State, each county's composite score was assigned a weight based on the number of children served in foster care in the county in FY 2004. That is, counties with larger foster care populations were weighted more heavily than counties with smaller foster care populations. The State composite score was calculated as the mean of the weighted county composite scores for that State. That is, the weighted composite scores for each county were summed and the sum was divided by the number of counties. This resulted in the State composite score.

11. Conduct a consolidated variable analysis. Initially, a separate PCA was conducted for each of the composite areas. At this point, we also conducted a consolidated variable PCA in order to cross-validate the solutions that emerged from the separate PCAs. That is, the PCA was applied to all of the measures taken together. The results generated from the consolidated variable analysis were identical to those that emerged from the separate PCAs; thus, the overall four-composite solution was identical across different data analyses.

12. Transform State composite scores to a scale ranging from 50 to 150. The initial composite scores were derived from of z-scores. We transformed the scores into ranked scale scores by using a transformation that assures that the maximum State Composite Score attains a value of 150 and the minimum State Composite Score attains a value of 50. The other scores fall between these two limits depending on their actual State Composite Score.[11]

[11] The formula for transforming the standard scores into ranked scaled scores was the following: [100 × ((State Composite Score − Minimum State Composite Score) / (Maximum State Composite Score − Minimum State Composite Score)) + 50].

Response to Concerns Regarding Use of PCA.

Several individuals commenting on the notice published in the November 7, 2005 **Federal Register** expressed concerns about our use of PCA to generate composite scores. We believe that some of these concerns are addressed in the description of PCA and our process provided in the first section of this attachment. Additional specific concerns are presented below (and underlined), followed by our response.

• *The use of PCA may mask the importance of individual variables and perhaps prevent States from identifying ''salient contributing variables.''* Although the PCA shifts the focus of interpretation to a composite score rather than individual scores that make up a composite, the relative contribution of an individual measure to the composite scores will be known to States through the county weights of the number of children served and the coefficients assigned to each measure. From a statistical perspective, the more salient a particular variable or measure, the greater the weight. In a PCA, a critical measure will have a prominent role either as the ''marker variable'' in a PCA (*i.e.*, the one that makes the largest contribution to the component with regard to the amount of variance for which it accounts) or as the sole measure that loads on a particular component. With regard to actual performance on individual measures, ACF will provide these data in the State Data Profile for each of the States.

• *The ACF proposal seems to arbitrarily group indicators together. The methodology of putting several indicators together and forcing them to be a composite single indicator contradicts the potentially powerful intent and purpose of PCA.* As noted in the first section of this attachment, the PCA combines scores based on inter-correlations among the variables used in the analysis. It does not force unrelated variables onto a single component. As indicated under step 11 above, a consolidated variables analysis produced the same results as the composite-specific analyses. That is, the same variables were inter-correlated with one another in both analyses and the same components emerged.

• *It would be better to use other forms of analysis such as logistic regression that might demonstrate the variables predictive of a dichotomous outcome (such as maltreatment in foster care).* PCA reduces a larger set of variables into a smaller set based on observed empirical relationships. In comparison, regression uses one set of variables to

predict an outcome measure. Our goal in constructing composites was to identify relationships among variables that relate to a particular performance domain. Also, the goal of the CFSR is to measure performance on given outcomes rather than to predict performance on a given outcome.

• *PCA does not compensate for measures that are currently misunderstood or inadequately defined; it compounds the existing weaknesses in each measure.* It is incorrect to say that

• *Knowledge-building and the interpretation of research is greatly limited by using component factors calculated as proposed.* The current set of measures has a latent structure inherent within it. PCA analysis enables us to explore that structure and identify a variety of highly interpretable PC composite scores. We believe that the results of our analyses are very strong and lead to unambiguous interpretations of the principal components used to evaluate performance.

• *Even sophisticated users of this method agree that the number of factors to choose when using the method is to some extent arbitrary.* We used a highly conservative, data-driven approach to identify the relationships among variables. These relationships are not arbitrary; rather they are derived empirically from the data and reflect the structure inherent within the data. It is important to note that changes in extraction and rotation would have little or no impact on the present analysis as the cross-validation analysis in Step 11 indicates. In addition, all four solutions were replicated across two different samples, suggesting a high level of stability. Although every statistical procedure includes some degree of estimation error, the present analyses are robust and do not invite arbitrary interpretation of the results.

• *More user-friendly approaches to creating composite outcome measures are available, but not mentioned in the ACF recommendations.* We believe that the options available for constructing composites from a set of data measures are principal components/factor analysis, cluster analysis, and multidimensional scaling. Based on our discussions with our expert consultant, we believe that PCA is the most appropriate option in the present case. We began our analysis of the CFSR variables making only the assumption that the variables possess some latent structure. There was no designated criterion variable that we could use as a dependent/outcome measure. Our task was to reduce an existing set of variables to a smaller set of inter-correlated composite scores. Regression/survival methods could be used if we were to select an outcome measure as the criterion that will be predicted. However, at the outset of this effort, we determined that we would not identify or use an outcome measure to estimate the weight of each variable in relation to the designated outcome variable.

• *Composite scores have no intrinsic meaning or relationship to important outcomes.* Composite scores are used routinely in educational testing and assessment because they are more reliable in that they represent the construct of interest better than any single variable. Two basic psychometric principles of measurement are (1) a test with more questions is more reliable; and (2) combining related scores into a composite score results in a more reliable and valid score than the individual scores on which the composite is based. This is contrary to the notion that well-planned composite scores are inferior to individual scores that are used to create the composite.

• *No uniformly agreed methodology exists to weight individual indicators before aggregating them into a composite indicator.* A uniform methodology does exist for conducting a PCA. There are many highly respected books that lay out the steps to follow and how to make critical decisions. All of these books recommend the same general process. Our approach to using PCA was very systematic and conservative. Like all statistical procedures, the researcher must make choices that impact the outcome. For example, in regression analysis, the researcher must select variables, determine an order in which they enter the analysis, and decide whether nonlinear components are relevant. The output also will depend on sample size and what population is sampled.

Establishing the National Standard

The process for establishing the national standards on the composite scores was identical to that used for the first round of the CFSR. (See ACYF–CB–IM–00–11 and ACYF–CB–IM–01–07). The sampling error adjustments were done on the standard score data prior to conversion to the scale score.

TABLE 1.—COEFFICIENTS (WEIGHTS) FOR THE MEASURES INCLUDED IN THE PERMANENCY-RELATED DATA COMPOSITES

Composites and variables	Components		
	Component 1	Component 2	Component 3
Permanency Composite 1: Timeliness and Permanency of Reunification.	Timeliness of Reunification.	Permanency of Reunification.	Not Applicable.
Reunifications in less than 12 months of children exiting foster care to reunifications.	0.447.	0.032.	
Median time in foster care to reunification	0.433.	0.006.	
Reunifications in less than 12 months of children entering foster care.	0.342.	0.121.	
Re-entries of children into foster care in less than 12 months	0.141.	1.107.	
Permanency Composite 2: Timeliness of Adoptions	Length of time in foster care to adoption.	Progress toward adoption of children in foster care for 17 months or longer.	Timeliness of adoptions for children who are legally free for adoption.
Adoptions within 24 months of entry into foster care	0.536	−0.035	−0.033.
Median length of stay of children adopted	0.557	0.114	−0.042.
Adoptions within 12 months of children in foster care for 17 months or longer.	−0.095	0.524	0.249.
Children legally freed for adoption within 6 months who have been in foster care for 17 months or longer.	0.152	0.709	−0.254.
Adoptions within 12 months of children who are legally free for adoption.	−0.41	−0.058	0.942.
Permanency Composite 3: Achieving permanency for children in foster care for long periods of time.	Children exiting to permanent homes.	Children exiting to emancipation.	Not applicable to this composite.

TABLE 1.—COEFFICIENTS (WEIGHTS) FOR THE MEASURES INCLUDED IN THE PERMANENCY-RELATED DATA COMPOSITES—Continued

Composites and variables	Components		
	Component 1	Component 2	Component 3
Children in foster care for 24 or more months who achieve permanency in less than 12 months.	0.468	0.274.	
Permanent homes for children who are legally freed for adoption	0.804	−0.244.	
Children emancipated from foster care who were in foster care for 3 years or longer.	−0.146	0.922.	
Permanency Composite 4: Placement stability	Placement stability	Not applicable for composite.	Not applicable for composite.
Placement stability for children in foster care for less than 24 months.	0.399.		
Placement stability for children in foster care between 12 and 24 months.	0.421.		
Placement stability for children in foster care for 24 months or longer.	0.398.		

[FR Doc. 06–5193 Filed 6–6–06; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0220]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Administrative Detention and Banned Medical Devices.

DATES: Submit written or electronic comments on the collection of information by August 7, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Detention and Banned Medical Devices—(OMB Control Number 0910–0114)—Extension

The Food and Drug Administration (FDA) has the statutory authority under section 304(g) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 334(g)), where officers or employees duly designated by the Secretary (FDA investigators) may detain devices during establishment inspections which are believed to be adulterated or misbranded. On March 9, 1979, FDA issued, under § 800.55 (21 CFR 800.55), a final regulation on Administrative Detention Procedures (44 FR 13234), under section 304(g) of the act, which includes certain reporting requirements (§ 800.55(g)(1) and (g)(2)) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an appellant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception, or unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial

danger to the health of individuals. The final regulation for Banned Devices (44 FR 29221), which issued on May 18, 1979 (part 895 (21 CFR part 895)), contained certain reporting requirements (§§ 895.21(d) and 895.22(a)).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22(a)	26	1	26	16	416
Total					441

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Record	Total Hours
800.55(k)	1	1	1	20	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with the last firm whose devices had been detained. Historically, FDA has had very few or no annual responses for this information collection.

Dated: June 1, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8838 Filed 6–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0190]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Olfactory Test Device; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Olfactory Test Device.'' This guidance document describes a means by which the olfactory test device may comply with the requirement of special controls for class II devices. It includes recommendations for validation of device performance and labeling. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify these device types into class II (special controls).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Olfactory Test Device'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Eric A. Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying olfactory test device into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for olfactory test device.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on olfactory test devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An

alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Olfactory Test Device,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1595 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions [including lists of approved applications and manufacturers' addresses], small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 24, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–8792 Filed 6–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institutes, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 10, 2006.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31/Conference Room 6, Bethesda, MD 20892.

Time: 7 p.m. to 11 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31/Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD., Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892. 301–496–7628. *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5146 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 29–30, 2006.

Time: June 29, 2006, 8 a.m. to 6 p.m.

Agenda: Director's Report; Ongoing and New Business; Reports Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Review; and Scientific Presentations.

Place: National Institutes of Health, Building 31, C Wing, 6 Floor, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20892.

Time: June 30, 2006, 8:30 a.m. to 1 p.m.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Review; and Scientific Presentations.

Place: National Institutes of Health, Building 31, C Wing, 6 Floor, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Director, Division of

Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892. 301–496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5149 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby giveen of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Prevention, Control and Population Sciences.

Date: June 19–21, 2006.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Hasnaa Shafik, MD PhD, Scientific Review Administrator, Division of Extramural Activities, RPRB, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd. Room 8037, Bethesda, MD 20892, (301) 451—4757, *shafikh@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention, Control, and Popoulation Sciences.

Date: June 20–21, 2006.

Time: 12 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, (301) 594–1224.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFA: CA07–005, Advanced Proteomic Platforms and Computation Sciences for the NCI Clinical Proteomic Technologies Initiative.

Date: June 26–27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NIH Small Grants Program for Cancer Epidemiology PAR04–159 and Cancer Prevention PAR04–147.

Date: July 11–13, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Irina Gordienko, PhD, Scientific Review Administrator, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd, Rm 7073, Bethesda, MD 20892, 301–594—1566, *gordienkoiv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5151 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Biomedical Research and Research Training Review Subcommittee A.

Date: June 20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892. (301) 594–2848. *latkerc@nigms.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Biomedical Research and Research Training Review Subcommittee B.

Date: June 21, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892. (301) 594–2886. *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology,

Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5152 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee; Microbiology & Infectious Diseases Research Committee, June 2006.

Date: June 21–22, 2006.

Time: June 21, 2006, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Time: June 22, 2006, 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Rm. 3126, Bethesda, MD 20892–7616. (301) 451–2671. *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5154 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Training Grants Review.

Date: June 19, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase, 4300 Military Road NW., Washington, DC 20015.

Contact Person: David George, PhD, Director, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892. 301–496–8633. *georged1@mail.nih.gov.*

Dated: May 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5155 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Aggression, Intoxication & The Environment: Multi-level Analyses of Barroom Data.

Date: July 12, 2006.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, Ph.D., MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304. 301–443–2369. *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5156 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Loan Repayment Program.

Date: June 6, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katrina L. Foster, Ph.D., Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5636 Fishers Lane, Rm. 3042, Rockville, MD 20852. 301 443—4032. *katrina@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5157 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director, Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research with legitimate scientific purpose that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open the public, however pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at *http://www.biosecurityboard.gov/meetings.asp* or by calling Capitol Consulting Corporation (Contact: Saundra M. Bromberg), at 301–468–6004, ext. 406. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

Name of Committee: National Advisory Board for Biosecurity.

Date: July 13, 2006.

Open: 8 a.m. to 6 p.m.

Agenda: Presentations and discussions regarding: (1) Criteria for defining dual use research in the life sciences; (2) the role of a code of conduct for the life sciences; (3) communications of dual use research; (4) international perspectives on dual use research; (5) public comments; and (6) and other business of the Board.

Place: The National Institutes of Health, 31 Center Drive, Building 31, 6C—Room 10, Bethesda, Maryland 20892.

Contact Person: Laurie Lelwallen, NSABB Program Assistant, 6705 Rockledge Drive, Bethesda, Maryland 20892, (301) 496–9838.

This meeting will also be Webcast. The draft meeting agenda and other information about NSABB, including information about access to the Webcast and pre-registration, will be available at *http://www.biosecurityboard.gov/meetings.asp.*

Any member of the public interested in presenting oral comments at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received by June 30, 2006 and should be sent via e-mail to *nsabb@od.nih.gov* with ''NSABB Public Comment'' as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention Laurie Lewallen. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: May 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5150 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; B&T Cell Development and Evolution.

Date: June 15, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. 301–435–1223. *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HAI Overflow Special Emphasis Panel Review.

Date: June 22, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892. 301–435–1187. *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk and Substance Abuse.

Date: June 22, 2006.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D, MSC 7759, Bethesda, MD 20892. 301–451–9956. *gboyd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation and Photodynamic Cancer Therapies Member Conflict.

Date: June 23, 2006.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hungyi Shau PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. 301–435–1720. *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropharmacology Small Businesses.

Date: June 26–27, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant application.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–2507. *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships—Physiology and Pathobiology of Organ Systems.

Date: June 26–28, 2006.

Time: 3 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Chesapeake Room, Washington, DC 20037.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. 301–435–2365. *abdelouahaba@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5153 Filed 6–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24971]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) Subcommittee on Hazardous Cargo Transportation Security (HCTS) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. The CTAC Working Groups on Barge Emissions and Placarding, the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) Annex II and Marine Vapor Control Systems will also meet to discuss environmental issues and future changes to regulations. These meetings will be open to the public.

DATES: The MARPOL Annex II Working Group will meet on Wednesday, June 14, 2006, from 8:30 a.m. to 3 p.m. The Marine Vapor Control System Working Group will meet on Wednesday, June 14, 2005 from 3 p.m. to 5 p.m. The HCTS Subcommittee will meet on Thursday, June 15, 2006, from 8:30 a.m. to 4 p.m. The Barge Emissions and Placarding Working Group will meet on Friday, June 16, 2006, from 8:30 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 12, 2006. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before June 12, 2006.

ADDRESSES: All meetings will be held at Stolthaven Houston, 15635 Jacintoport Blvd, Houston, TX 77015. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–PSO–3), U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC 20593–0001 or E-mail: *CTAC@comdt.uscg.mil.* This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–372–1425, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of MARPOL Annex II Working Group Meeting on Wednesday, June 14, 2006

(1) Introduce Working Group members and attendees.

(2) Review and edit draft guidance document for the U.S. implementation of revisions to MARPOL Annex II and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

Agenda of Marine Vapor Control Systems Working Group Meeting on Wednesday, June 14, 2006

(1) Introduce Working Group members and attendees.

(2) Review task statement.

(3) Review vapor balancing operations during cargo unloading.

(4) Review previous CTAC recommendations on vapor balancing operations during cargo unloading.

Agenda of the HCTS Subcommittee on Thursday, June 15, 2006

(1) Introduce Subcommittee members and attendees.

(2) Develop guidance for updating definition of certain dangerous cargo (CDC) residues.

(3) Discuss current Notice of Arrival regulations.

Agenda of Barge Emissions and Placarding Working Group Meeting on Friday, June 15, 2006

(1) Introduce Working Group members and attendees.

(2) Review responsibilities for local responders to marine incidents.

(3) Develop guidance for identifying cargoes on inland barges for first responders.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings generally limited to 5 minutes. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before June 12, 2006. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES**) no later than June 12, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: May 31, 2006.

Howard L. Hime,

Acting Director of Standards, Assistant Commandant for Prevention.

[FR Doc. E6–8779 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension Agency Information Collection Activity Under OMB Review: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 17, 2006 (71 FR 13990).

DATES: Send your comments by July 7, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be emailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, DHS–TSA Desk Officer, at *Nathan.lesser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Attorney-Advisor, Office of Chief Counsel, TSA–02, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0013.

Forms(s): Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Affected Public: Airline travelers.

Abstract: This airport survey represents an important part of TSA's efforts to collect data on customer satisfaction with TSA's aviation security procedures. TSA will use airport surveys to compute a statistically valid Customer Satisfaction Index for Aviation Operations (CSI–A) system-wide and for individual airports. TSA also will use informal airport surveys, conducted by airport staff, for targeted measurement.

Number of Respondents: 124,000.

Estimated Annual Burden Hours: An estimated 10,000 hours annually.

Issued in Arlington, Virginia, on May 31, 2006.

Peter Pietra,

Director, Privacy Policy and Compliance.

[FR Doc. E6–8778 Filed 6–6–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–S041–N–20]

Notice of Proposed Information Collection: Comment Request; Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject

DATES: *Comments Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Lillian_L_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Bums, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708—2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including

the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report.

OMB Control Number, if applicable: 2502–0477.

Description of the need for the information and proposed use: The information collected on the ''Request for Approval of Advance of Escrow Funds'' form is to ensure that escrowed funds are disposed of correctly for completion of offsite facilities, construction changes, construction cost not paid at final endorsement, non-critical repairs and capital needs assessment. The mortgagor must request withdrawal of escrowed funds through a depository (mortgagee). The HUD staff, Mortgage Credit Examiner, Inspector, and Architect, must use information collected to approve the withdrawal of escrowed funds for each item.

Agency form numbers if applicable: HUD–54114.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 18,750; the number of respondents is 375,000 generating approximately 375,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 3 minutes per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 31, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 06–5148 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–503–N–30]

Application for Fee or Roster Personal (Appraisers and Inspectors) Designation and Appraisal Report Forms

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The FHA Appraiser Roster is a national listing of eligible appraisers who prepare appraisals on single-family properties that will be security for FHA insured mortgages. The FHA Inspector Roster is a national listing of eligible inspectors who determine the quality of construction of single-family properties that will be security for FHA insured mortgages. FHA Roster Appraisers and Inspectors assist in protecting the interest of HUD, the taxpayers, and the FHA insurance fund. Appraisal report forms are industry standards for single-family property types.

DATES: *Comments Due Date:* July 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0538) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Fee or Roster Personal (Appraisers and Inspectors) Designation and Appraisal Report Forms.

OMB Approval Number: 2502–0538.

Form Numbers: HUD–92563, HUD–92564–CN, Fannie Mae Forms: 1004, 1004c, 1025, 1073, 1075, and 2055.

Description of the Need for the Information and Its Proposed Use: The FHA Appraiser Roster is a national listing of eligible appraisers who prepare appraisals on single-family properties that will be security for FHA insured mortgages. The FHA Inspector Roster is a national listing of eligible inspectors who determine the quality of construction of single-family properties that will be security for FHA insured mortgages. FHA Roster Appraisers and Inspectors assist in protecting the interest of HUD, the taxpayers, and the FHA insurance fund. Appraisal report forms are industry standards for single-family property types.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	17,650		26.5		0.053		25,184

Total Estimated Burden Hours: 25,184.

Status: Revision of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 31, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–8766 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–10]

Notice of Proposed Information Collection for Public Comment; Public Housing Assessment System; Appeals, Technical Reviews and Database Adjustments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name /or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Assessment System (PHAS); Appeals, Technical Reviews and Database Adjustments.

OMB Control Number: Pending.

Description of the need for the information and proposed use: Pursuant to § 6(j)(2)(A)(iii) of the Act, HUD is required to establish procedures for a PHA to appeal troubled designation. The PHAS regulation at § 902.69 provides the opportunity for a PHA to appeal its troubled designation, petition for the removal of troubled designation, or appeal its score. The PHAS regulation at § 902.68 affords PHAs the opportunity to request a technical review of its physical condition inspection or a database adjustment, or a technical review of its resident satisfaction survey, if certain conditions are present. A technical review of the physical condition inspection may be requested if a PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual property. A technical review of the resident satisfaction survey results may be requested in cases where the contracted third party survey administrator can be shown by a PHA to be in error.

Multifamily entities are also provided the opportunity to submit technical review and database adjustment requests for their physical condition score pursuant to 24 CFR parts 5 and 200, and technical reviews of resident/customer surveys for multifamily entities when such surveys are conducted.

Agency form number, if applicable: N/A.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated average number of respondents is 351.5 PHAs and 496 multifamily entities that submit request for an appeal, technical review, or database adjustment for a total 847.5 PHAs and multifamily entities that submit annually. The average total reporting burden is 4,407 hours.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 31, 2006.

Bessy Kong,

Director, Policy, Program and Legislative Initiatives.

[FR Doc. E6–8767 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–32]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Section 901 Notices of Intent, Fungibility Plan and Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 21, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Maurice Champagne, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Maurice_B._Champagne@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to

OMB, for emergency processing, an information collection package with respect to Section 901 Notice of Intent, Fungibility Plan and Report. Eligible PHAs in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan notifying HUD they intend to exercise funding flexibility and describing how program funds will be reallocated and spent to meet hurricane-related needs.

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 901 Notice of Intent, Fungibility Plan and Report.

Description of Information Collection: Eligible PHAs in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan notifying HUD they intend to exercise funding flexibility and describing how program funds will be reallocated and spent to meet hurricane-related needs.

OMB Approval Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: Individuals or households, State, local or tribal government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 6,336, number of respondents is 96 frequency response is biennially, and the hours of response is 66.00.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 2, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–8840 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–31]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Emergency Preparedness Plan Survey

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 21, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Maurice Champagne, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Maurice_B._Champagne@omb.eop.gov*; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L_Deitzer@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to The Emergency Preparedness Plan Survey. The Emergency Preparedness Plan Survey will be used by HUD to determine the degree of readiness for public housing agencies (PHAs) and Tribe/Tribally Designated Housing Entities (TDHEs) in the case of a natural disaster. HUD will provide pertinent information and technical assistance to establish viable and executable Emergency Preparedness Plans to PHAs and Tribes/TDHEs.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Emergency Preparedness Plan Survey.

Description of Information Collection: The Emergency Preparedness Plan Survey will be used by HUD to determine the degree of readiness for public housing agencies (PHAs) and Tribe/Tribally Designated Housing Entities (TDHEs) in the case of a natural disaster. HUD will provide pertinent information and technical assistance to establish viable and executable Emergency Preparedness Plans to PHAs and Tribes/TDHEs.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: Not-for-profit institutions, State, local or tribal government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 13,228, number of respondents is 4,810 frequency response is biennially, and the hours of response is 2.75.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 1, 2006.

Lillian L. Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer .

[FR Doc. E6–8841 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–19]

Notice of Intent To Prepare Draft Environmental Impact Statement for Westpark, Bremerton, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Intent.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Bremerton, WA, intends to prepare an Environmental Impact Statement (EIS) for the redevelopment of Westpark public housing community located in Bremerton, WA. The City of Bremerton, as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and the Bremerton Housing Authority (BHA), as lead agency for compliance with the Washington State Environmental Policy Act (SEPA, RCW 43.21C) will perform the joint environmental review. This notice is in accordance with regulations of the Council on Environmental Quality at 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a ''Cooperating Agency.''

An EIS will be prepared for the proposed action described herein. Comments relating to the scope of the EIS are requested and will be accepted by the contact person listed below.

When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below.

Lead Agencies: This EIS will be a joint National Environmental Policy Act (NEPA) and Washington State Environmental Policy Act (SEPA) document intended to satisfy requirements of federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58, HUD has allowed NEPA authority and NEPA lead agency responsibility to be assumed by the City of Bremerton. The BHA is the lead agency for compliance with SEPA.

Comments: All interested agencies, groups, and persons are invited to address written comments related to the scope of the EIS to the address shown below. All comments received by June 28, 2006, will be considered in preparation of the Draft EIS to: (1) Determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates that the EIS should consider, and potential alternatives to the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a '' Cooperating Agency.''

FOR FURTHER INFORMATION CONTACT: Chris Hugo, Director, Department of Community Development, City of Bremerton, 345 6th Street, Suite 600, Bremerton, WA 98337; Phone: (360) 473–5275; FAX: (360) 473–5278; e-mail: *chris.hugo@ci.bremerton.wa.us.*

SUPPLEMENTARY INFORMATION:

A. Background

The Westpark public housing community, built in 1941, is the remnant of a larger World War II-era housing project that was built as temporary housing for shipyard workers. Located on the 80-acre site, which is in west Bremerton, are 631 residential units, a Community Center, Senior Center, Teen Center, Head Start facility, laundry and storage facilities, a maintenance shop, and administrative offices. The 571 public housing units are in primarily single story duplex and fourplex structures. In addition, there is a 60-unit apartment building for elderly and disabled residents, and a 72-unit assisted living facility is under construction.

The proposed redevelopment will be completed in three phases. The Community Center, the apartment building housing elderly and disabled residents, and the assisted living facility will remain. All other structures will be demolished. In addition, much of the existing infrastructure would be replaced. The site would be redeveloped to provide approximately 660 to 900 dwelling units of which about one third would be rental housing and two thirds would be for-sale housing. Some residential units would be in mixed residential and commercial structures, and approximately five acres of the site would be developed for commercial and small retail uses. The rental housing would serve households of very low-income. The proposed redevelopment is consistent with requirements for a mixed-use, mixed-income housing project as defined by HUD.

All existing low-income housing will be replaced either on-site, or elsewhere in Bremerton or Kitsap County. Replacement housing will be provided through construction of public housing units on-site and the use of Section 8 vouchers in off-site housing complexes. Existing residents would be displaced and assisted with benefits according to the provisions of the Uniform Relocation Act. Where possible, displaced residents in good standing would be allowed to return to the public housing units once redevelopment is complete.

B. Need for the EIS

The City of Bremerton and the BHA have determined that the proposed project constitutes an action that has the potential to affect the quality of the human environment and, therefore, requires the preparation of an EIS in accordance with NEPA and SEPA.

C. Alternatives

The alternatives to be considered by the lead agencies will include a no action alternative and a *redevelopment alternative* to the proposed action. The redevelopment alternative will be finalized after the scoping meeting and conclusion of the written comment period. It may include options related to grading of the site, housing densities, infrastructure replacement and design, storm water management, and/or the amount and location of commercial/retail space.

D. Scoping Meeting

A public EIS scoping meeting will be held on June 22, 2006, starting at 5:30 p.m. at the Westpark Community Center, 79 Russell Road, Bremerton, WA. The EIS scoping meeting will provide an opportunity for the public to learn more about project planning and to provide input to the environmental review process. At the meeting, the public will be able to view graphics illustrating preliminary planning work and the project design team, and ask questions of or provide input to staff from the City of Bremerton and BHA, and members of the consultant team providing technical analysis for to the EIS. Written comments and oral testimony concerning the scope of the EIS will be accepted at this meeting, or by submittal to the City of Bremerton by June 27, 2006.

E. EIS Issues

The lead agencies have preliminarily identified the following environmental elements for discussion in the EIS:

Earth (geology, soils, topography)

- Air Quality;
- Water (surface water movement/quantity, runoff/absorption, flooding, groundwater movement/quantity/quality);
- Plants and Animals;
- Energy Use;
- Noise;
- Land Use and Socioeconomics (land use patterns, relationship to plans/policies and regulations; population; housing and displacements);
- Environmental Justice (disproportionately high and adverse effects on minority and low income populations);
- Historic and Cultural Resources;
- Aesthetics, Light and Glare;
- Parks and Recreation;
- Public Services and Utilities (fire, police, parks/recreation, communications, water, stormwater, sewer, solid waste); and
- Transportation (transportation systems, parking, movement/circulation, traffic hazards).

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: May 30, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E6–8765 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Fund Availability, Competitive Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: This notice informs Indian tribes that grant funds are available through a Competitive Grant Program and that the Office of Indian Energy and Economic Development (IEED) is soliciting applications from eligible interested entities. To encourage greater tribal participation in this initiative, IEED is offering grants to assist federally-recognized Indian tribes in preparing tribal plans designed for participation in Public Law 102–477.

DATES: Applications must be received on or before July 7, 2006. Applications received after this date will not be considered.

ADDRESSES: Mail or hand deliver applications to: Office of Indian Energy and Economic Development, Attention: Lynn Forcia, Chief, Division of Workforce Development, Mail Stop 18-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Potential applicants should fax a request for a copy of the guidance to (202) 208–6991.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, (202) 219–5270 or Jody Garrison, (202) 208–2685.

SUPPLEMENTARY INFORMATION: This solicitation consists of six parts.

- Part I provides the funding description and background information.
- Part II describes the selection criteria.
- Part III provides the form and content of application submission.
- Part IV provides application review information.
- Part V provides information for selection and non-selection of applicants for award.
- Part VI describes the authority which grants this solicitation for applications for this grant.

I. Background

Congress enacted Public Law 102–477 (477) on October 23, 1992, with full tribal participation, and 477 was implemented on January 1, 1994. The 477 initiative is a program that enables tribes to consolidate Federal funds and devote up to 25 percent of their total resources for economic development projects. The 477 Tribal Work Group, composed of existing grantees, has provided training for tribes wishing to participate in this program.

Independent studies, congressional testimony, the Office of Management and Budget's PART review, and 477 participating tribes have all recognized 477 as an innovative and successful program of benefit to tribes. However, the program has grown slowly over the past 12 years. Many tribes not a part of 477 have lacked the opportunity to determine whether their participation in this program would be suitable for their communities.

To encourage greater tribal participation in this highly successful initiative, the Office of Indian Energy and Economic Development (IEED) is offering grants to assist tribes to develop 477 plans. A limited number of tribal grantees, chosen on a competitive basis, will be provided funding of up to $25,000 to develop a 477 plan that will meet statutory requirements.

II. Selection Criteria

IEED will select applicants for the grant funding based upon the following criteria:

- 40 percent—the tribe's demonstration that it lacks resources necessary to prepare a plan;
- 30 percent—the extent to which the tribal staff responsible for implementation of the program will have been involved in the preparation of a plan; and
- 30 percent—the extent to which job creation and/or job accessibility activities are planned.

In order to be considered eligible for consideration, tribes must document successful audits for the past 2 years.

III. Form and Content of Application Submission

All applications must contain the following information or documentation:

(1) Standard Form 424, Application for Financial Assistance.

(2) Budget not to exceed $25,000, which identifies proposed expenses (1–2 pages).

(3) Narrative (not to exceed 5 pages) which—

(a) Identifies the Federal programs the tribe intends to incorporate into the 477 plan, with estimated funding levels;

(b) Explains the tribe's need for financial assistance to prepare a plan;

(c) States why the tribe intends to participate in Public Law 102–477 and the expected measurable outcome; and,

(d) Provides the contact person's name, address, and fax and telephone numbers.

(4) One copy of the single audit for the past 2 years, if tribe is required to complete audits.

IV. Application Review Information

Within 30 days of receiving the application, IEED will acknowledge receipt by letter to the applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or ineligible, it will be returned to the applicant with an explanation from the Division of Workforce Development.

A review team will evaluate all applications and make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria under the heading ''Selection Criteria.'' All applications that are complete and eligible will be ranked competitively based on the criteria under the heading

''Form and Content of Application Submission.''

V. Notification of Selection/Non-Selection

Those tribes selected to participate will be notified by letter. Tribes will be notified within 60 days of the application deadline. Upon notification, each tribe selected will be awarded a grant.

The Chief, Division of Workforce Development will notify each tribe of non-selection.

VI. Authority

This notice is published in accordance with Public Law 102–477 and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: May 22, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–8864 Filed 6–6–06; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Amendment.

SUMMARY: This notice publishes an Approval of the Amendment to Interim Compact between the Chippewa Cree Tribe of the Rocky Boy's Reservation and the state of Montana regarding Class III Gaming on the Rocky Boy's Reservation.

DATES: *Effective Date:* June 7, 2006.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows for the expansion of the Tribe's number of machines, prize limits, wager limits, and adopts technical standards for electronic games of chance.

Dated: May 16, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–8811 Filed 6–6–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–923–06–1320–00]

Notice of Federal Competitive Coal Lease Sale, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale, Kenilworth Tract Coal Lease Application UTU–81893.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management-Utah State Office will offer certain coal resources described below as the Kenilworth Tract (UTU–81893) in Carbon County, Utah, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sales in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 1 p.m., Thursday June 8, 2006. The bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Thursday, June 8, 2006. The Cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that envelope contains a bid for Coal Lease Sale UTU–81893, and is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the Utah State Office, Bureau of Land Management in the Monument Conference Room, Fifth Floor, 440 West 200 South, Salt Lake City, Utah. Sealed bids can be hand delivered to the cashier, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah, or may be mailed to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Stan Perkes, 440 West 200 South, Suite 500, Salt City, Utah 84101–1345 or telephone 801–539–4036.

SUPPLEMENTARY INFORMATION: This Coal Lease Sale is being held in response to a lease by application (LBA) filed by Andalex Resources Inc. The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah approximately eight miles northeast of Helper, Utah on private lands with federally administered minerals:

T. 12 S., R. 10 E., SLM, Carbon County, Utah
Sec. 26, N½SW¼, SE¼SW¼, SE¼;
Sec. 27, S½;
Sec. 34, S½NE¼, NW¼NE¼, NW¼, S½;
Sec. 35, NE¼, S½NW¼, S½.
Containing 1,760.00 acres

The Kenilworth coal tract has one or more minable coal beds. The minable portions of the Castlegate A coal bed in this area is around six to twelve feet in thickness. The Castlegate A bed contains more than 14.9 million tons of recoverable high-volatile A bituminous coal. The Kenilworth coal bed may be recoverable but further analysis will be required through. The estimated coal quality in the Castlgate A coal bed on an ''as received basis'' is as follows:

13,060	Btu/lb.,
2.92	Percent moisture,
7.61	Percent ash,
41.82	Percent volatile matter,
47.83	Percent fixed carbon,
0.41	Percent sulfur.

The Kenilworth Tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the authorized officer after the Sale. The Department of the Interior has established a minimum bid of $100 per acre or fraction thereof for the tracts. The minimum bid is not intended to represent the FMV. The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, a royalty rate of 12.5 percent of the value of coal mined by surface methods, and a royalty of 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement, including bidding instructions for the offered tracts and the terms and conditions of the proposed coal lease, is available from Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 500), 440 West 200 South, Salt Lake City, Utah 84101. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as

proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the Public Room (Room 500) of the Bureau of Land Management.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. E6–8796 Filed 6–6–06; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–PK]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Eastern Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held July 19, 2006, at the Bureau of Land Management Montana State Office, 5501 Southgate Drive, Billings, Montana, 59101, beginning at 7 a.m. The public comment period will begin at 11:30 a.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in eastern Montana. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below. The Council will hear updates on the Miles City Resource Management Plan and the coal bed natural gas SEIS, Yellowstone River island ownership, and tour the Pompeys Pillar National Monument interpretive center.

FOR FURTHER INFORMATION CONTACT: Mary Apple, Resource Advisory Council Coordinator, Montana State Office, 5001 Southgate Drive, Billings, Montana, 59101, telephone 406–896–5258 or Sandra S. Brooks, Field Manager, Billings Field Office, telephone 406–896–5013.

Dated: June 1, 2006.

Sandra S. Brooks,

Billings Field Manager.

[FR Doc. E6–8824 Filed 6–6–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–06; NMNM 108883]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 108883

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease NMNM 108883 from the lessee, Coulthurst Management & Investment, Inc., for lands in Sandoval County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, at (505) 438–7530.

SUPPLEMENTARY INFORMATION: No lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 108883, effective the date of termination, September 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 2, 2006.

Bernadine T. Martinez,

Land Law Examiner.

[FR Doc. E6–8795 Filed 6–6–06; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. §§ 9622(d)(2), 9622(g)(12) and 28 CFR 50.7, notice is hereby given that on May 26, 2006, two proposed Consent Decrees in *United States* v. *Industrial Excess Landfill, Inc.*, Civil Action Number 5:89–CV–1988 (consolidated with *State of Ohio* v. *Industrial Excess Landfill, Inc.*, Civil Action Number 5:91–CV–2559), were lodged with the United States District Court for the Northern District of Ohio.

The first Consent Decree resolves claims against PPG Industries, Inc. (''PPG''), brought by the United States on behalf of the Environmental Protection Agency (''EPA'') under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for response costs incurred and to be incurred by the United States in responding to the release and threatened release of hazardous substances at the Industrial Excess Landfill Superfund Site (''Site'') in Uniontown, Ohio. Under its Consent Decree, PPG will pay the United States $72,500 in reimbursement of response costs.

The second Consent Decree resolves claims against Morgan Adhesives Co. (''Morgan''), brought by the United States on behalf of the Environmental Protection Agency under section 107 of CERCLA, 42 U.S.C. 9607, for response costs incurred and to be incurred by the United States in responding to the release and threatened release of hazardous substance at the Site, as well as CERCLA and other claims related to the Site brought against Morgan by the State of Ohio. Under its Consent Decree, Morgan will pay the United States $334,016 in reimbursement of response costs and will pay the State of Ohio $15,984 in reimbursement of response costs.

Both Consent Decrees are *de minimis* settlements pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). Under the respective Consent Decree, the United States covenants not to sue PPG, and the United States and the State of Ohio covenant not to sue Morgan, regarding the Site, subject to reservations of rights should information be discovered which indicates that a settling defendant no longer qualifies as a *de minimis* party, as well as reservations commonly included in CERCLA settlements of all

rights with respect to certain other claims.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Industrial Excess Landfill, Inc.*, DOJ Ref. # 90–11–3–247/2.

Each Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, Ohio 44113, and the Region Blvd., Chicago, Illinois 60604. During the public comment period, each Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*.

A copy of each Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree library, please specify whether requesting the PPG Consent Decree, the Morgan Consent Decree, or both, and please enclose a check payable to the U.S. Treasury in the amount of $5.50 for the PPG Consent Decree, $6.25 for the Morgan Consent Decree, or $11.75 for both Consent Decrees (for reproduction costs of 25 cents per page).

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–5191 Filed 6–6–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Jerome Purze, et al.,* Case No. 04 C 7697, was lodged with the United States District Court for the northern District of Illinois on May 31, 2006. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands without a permit.

The proposed Consent Decree requires the defendants to pay a civil penalty, donate funds to a wetland restoration fund, and restore the impacted wetland. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Jerome Purze, et al.* Case No. 04 C 7697, including the USAO #2004V01553.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Kurt N. Lindland,

Assistant United States Attorney

[FR Doc. 06–5190 Filed 6–6–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,052]

Array-Hartland, Hartland, WI; Notice of Termination of Certification

On April 19, 2006, the Department issued a Notice of Intent to Terminate the Certification of Eligibility For Workers of Array-Hartland, Hartland, Wisconsin, to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance issued in accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, as amended (26 U.S.C. 2813). The notice of the intent to terminate the certification was published in the **Federal Register** on May 5, 2006 (71 FR 26563–26564).

The Department's notice requested that any persons showing a substantial interest in the termination of the certification to submit comments by May 15, 2006.

No comments were received. Accordingly, this certification is hereby terminated.

Signed in Washington, DC, this 18th day of May, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8770 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,948]

Carolina Mills, Inc., Plant #3, Newton, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 19, 2006, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 27, 2006 and published in the **Federal Register** on April 17, 2006 (71 FR 19755).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Carolina Mills, Inc., Plant #3, Newton, North Carolina engaged in production of woven textile fabrics was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of woven textile fabrics during the relevant period. The subject firm did not import woven textile fabrics nor did it shift production to a foreign country during the relevant period.

The petitioner states that the affected workers lost their jobs as a result of the negative impact of increased imports of gloves on U.S. glove manufacturing. The

petitioner alleges that the major declining customer of the subject firm which manufactures gloves decreased purchases of the woven textile fabrics from Carolina Mills, Inc., Plant #3, Newton, North Carolina because the customer has been importing the finished glove products from abroad. The petitioner states that the sales and production of woven textile fabrics at the subject firm have been negatively impacted by increasing presence of foreign imports of gloves on the market, thus workers of the subject firm should be eligible for TAA.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. Imports of gloves cannot be considered like or directly competitive with woven textile fabrics produced by Carolina Mills, Inc., Plant #3, Newton, North Carolina and imports of gloves are not relevant in this investigation.

The petitioner also alleges that production of woven textile fabrics has been negatively impacted by ''problems with yarn sourcing'', a component in the manufacturing process of woven fabrics. The petitioner provided the names of the yarn suppliers who were negatively impacted either by the shift in production of yarn abroad or increased imports of yarn.

The fact that subject firm's suppliers shifted their production abroad or were import impacted is relevant to this investigation if determining whether workers of the subject firm are eligible for TAA based on the secondary downstream producer of trade certified primary firm impact. For certification on the basis of the workers' firm being a secondary downstream producer, the subject firm must purchase articles for further production from a trade certified firm which in its turn has been impacted by shift in production to/increase in imports from Canada or Mexico.

The investigation revealed that the subject firm had only one supplier of yarn who was under TAA certification during the relevant time period. However this supplier accounted for less than one percent of subject firm's total purchases of yarn and a loss of business with this company did not contribute importantly to determine a negative trade impact on the subject firm. The rest of the companies which supplied yarn to the subject firm are not certified for TAA. Therefore, the subject firm workers are not eligible under secondary impact as a downstream producer.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8777 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,265]

Corinthian Inc., Sewing Department, Boonesville, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2006, in response to a petition filed on behalf of workers of Corinthian Inc., Sewing Department, Boonesville, Mississippi.

The worker group is covered by a current certification. The certification for TA–W–58,644, Corinthian, Inc., Sewing Department, Corinth, Mississippi, was amended on May 5, 2006, to include workers of Corinthian, Inc., Sewing Department, Boonesville, Mississippi. The workers were not separately identifiable between plants.

Consequently, further investigation in this petition would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 17th day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8774 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,390]

Eaton Corporation; Phelps, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 12, 2006 in response to a petition filed on behalf of workers at Eaton Corporation, Phelps, New York.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8773 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,367]

Forney Corporation, a Division of United Technologies Corp., Carrollton, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 2006 in response to a petition filed by a company official on behalf of workers at Forney Corporation, A Division of United Technologies Corporation, Carrollton, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8771 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,055]

New England Confectionery Company (NECCO), Stark Candy Company, Thibodaux, Louisiana; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated April 13, 2006, a company official requested administrative reconsideration in combination with a letter dated April 18, 2006 from the Louisiana Work, Department of Labor regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The

negative determination was signed on March 31, 2006, and was published in the **Federal Register** on April 17, 2006 (71 FR 19755).

The workers of New England Confectionery Company (Necco), Stark Candy Company, Thibodaux, Louisiana were certified eligible to apply for Trade Adjustment Assistance (TAA) on March 31, 2006.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the company official provided new information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of New England Confectionery Company (Necco), Stark Candy Company, Thibodaux, Louisiana, who became totally or partially separated from employment on or after March 16, 2005 through March 31, 2008, are eligible to apply for trade adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 22nd day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8768 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,373]

North Gate Litho Print, Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2006, in response to a worker petition filed by the State of Oregon on behalf of workers at North Gate Litho Print, Portland, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 18th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8772 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,827]

Stucki Embroidery Works, Inc., Fairview, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of May 17, 2006, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was issued on April 14, 2006. The Department's Notice of determination was published in the **Federal Register** on April 24, 2006 (71 FR 21044). Workers produced embroidered stars for American flags.

In the request for reconsideration, the company official stated that the subject firm produces a variety of products, including embroidered stars and lace.

A review of previously-submitted material reveal that another company official indicated that the subject workers produced embroidered star fields for American flags.

The Department has carefully reviewed the request for reconsideration based on new information provided and review of the initial decision and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8769 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,756]

Wagner Knitting, Inc., Including On-Site Leased Workers of ADP Total Source III, Inc., Lowell, NC; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 28, 2006, applicable to workers of Wagner Knitting, Inc., Lowell, North Carolina. The notice was published in the **Federal Register** on May 11, 2006 (71 FR 27519).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of circular knit fabrics.

New information shows that leased workers of ADP Total Source III, Inc. were employed on-site at the Lowell, North Carolina location of Wagner Knitting, Inc.

Based on these findings, the Department is amending this certification to include leased workers of ADP Total Source III, Inc. working on-site at Wagner Knitting, Inc., Lowell, North Carolina.

The intent of the Department's certification is to include all workers employed at Wagner Knitting, Inc., Lowell, North Carolina who was adversely affected by increased customer imports.

The amended notice applicable to TA–W–58,756 is hereby issued as follows:

All workers of Wagner Knitting, Inc., including on-site leased workers of ADP Total Source III, Inc., Lowell, North Carolina, who became totally or partially separated from employment on or after January 30, 2005, through April 28, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also

eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8776 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,152]

Westpoint Home; Abbeville Plant; Abbeville, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 5, 2006 in response to a petition filed by a company official on behalf of workers at Westpoint Home, Abbeville Plant, Abbeville, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8775 Filed 6–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 7, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community.

The Secretary of Labor's Opportunity and EVE award recipients must be Federal contractors covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

The Secretary of Labor's Opportunity Award is presented to one contractor each year that has established and instituted comprehensive workforce strategies to ensure equal employment opportunity. The EVE Award is given to those contractors who have demonstrated through programs or activities, exemplary and innovative efforts to create an inclusive American Workforce. The EPIC Award is presented to public interest organizations that have supported equal employment opportunity and linked their efforts with those of the Federal contractors to enhance employment opportunities for those with the least opportunity to join the workforce. Guidelines for the nomination process can be found in Administrative Notice Number 261 dated January 21, 2003; to view the Notice visit OFCCP web page address at *http://www.dol.gov/esa/media/reports/ofccp/evedr261.pdf.* This information collection is currently approved for use through January 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

OFCCP seeks a three-year extension for the approval of the Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. There is no change in the substance or method of collection since the last OMB approval. OFCCP revised the burden hour estimates associated with the awards based on the number of nominations received for Calendar Year (CY) 2005. During CY 2005, OFCCP received two (2) Secretary's Opportunity, seventeen (17) EVE, and twenty (20) EPIC award nominations. This information collection recognizes outstanding Federal contractors and non-profit public interest organizations with exceptional equal opportunity and nondiscrimination programs that support the OFCCP mission.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary

Public Interest Contribution (EPIC) Awards.

OMB Number: 1215–0201.

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents/Responses: 39.

Total Annual responses: 39.

Frequency: Annually.

Estimated Total Burden Hours: 4,460.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 2, 2006.

Ruben L. Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–8797 Filed 6–6–06; 8:45 am]

BILLING CODE 4520–CM–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

July 6, 2006, Public Hearing; Sunshine Act

TIME AND DATE: 2 p.m., Thursday, July 6, 2006.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford and opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, June 23, 2006. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary oft he subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, June 23, 2006. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice. OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: June 5, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–5224 Filed 6–5–06; 12:30 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27387; 812–13285]

Barclays Global Fund Advisors, et al.; Notice of Application

June 1, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order to amend a prior order that permits: (a) An open-end management investment company that includes series based on certain fixed-income securities indices to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; and (c) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares (''Prior Order'').[1] Applicants seek to amend the Prior Order in order to offer two additional series based on fixed-income securities indices (each series, a ''New Fund'').

Applicants: Barclays Global Fund Advisors (''Adviser''), iShares Trust (''Trust'') and SEI Investments Distribution Co. (''Distributor'').

Filing Dates: The application was filed on April 20, 2006 and amended on May 24, 2006.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 22, 2006 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Ira Shapiro, Barclays Global Fund Advisors, c/o Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105; Peter Kronberg, iShares Trust, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and John Munch, SEI Investments Distribution Co., One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and established in the state of Delaware. The Trust is organized as a series fund with multiple series. The Adviser, an investment

[1] Barclays Global Fund Advisors, *et al.*, Investment Company Act Release No. Release No. (June 25, 2002), as subsequently amended by iShares Trust, *et al.*, Investment Company Act Release No. 26006 (April 15, 2003) and Barclays Global Fund Advisors, *et al.*, Investment Company Act Release No. 26175 (September 8, 2003).

adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to each New Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934, serves as the principal underwriter for the Trust.

2. The Trust is currently permitted to offer several series based on fixed-income securities indices in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trust to offer the two New Funds, each of which, except as described in the application, would operate in a manner identical to the existing series of the Trust that are subject to the Prior Order.[2]

3. Each New Fund will invest in a portfolio of securities generally consisting of the component securities of a specified U.S. bond index (each, an ''Underlying Index'').[3] No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, or a promoter of a New Fund.

4. Each Underlying Index contains fixed-income securities that are eligible for inclusion in the underlying index for an existing series of the Trust that is subject to the Prior Order.[4] The 1–3 Year Credit Index represents that portion of the Aggregate Index consisting of U.S. investment grade bonds that have a remaining maturity of 1 to 3 years. The MBS Index represents that portion of the Aggregate Index consisting of U.S. agency mortgage pass-through securities. As with the Aggregate Bond Fund, the New Fund that would be based on the MBS Index (''MBS Fund'') intends to use ''to-be-announced'' (''TBA'') transactions and, in some cases, invest directly in U.S. agency mortgage pass-through securities, to track the performance of U.S. agency mortgage pass-through securities.[5]

5. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its relevant Underlying Index. Each New Fund will utilize as an investment approach a representative sampling strategy where each New Fund will seek to hold a representative sample of the component securities of the Underlying Index. The New Fund that would track the 1–3 Year Credit Index will invest at least 90% of its assets in the component securities of its Underlying Index and may invest the remainder of its assets in certain futures, options, and swap contracts, cash and cash equivalents, and in bonds not included in its Underlying Index which the Adviser believes will help the New Fund track its Underlying Index. The MBS Fund will have at least 90% of its assets invested in: (a) Component securities of its Underlying Index and (b) investments that have economic characteristics that are substantially identical to the economic characteristics of the component securities of its Underlying Index (*i.e.*, the TBAs, as discussed above).[6] The MBS Fund may invest the remainder of its assets in certain futures, options, and swap contracts, cash and cash equivalents, and in bonds not included in its Underlying Index which the Adviser believes will help the New Fund track its Underlying Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than 5 percent.

6. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the New Funds, except as specifically noted by applicants (as summarized above). Applicants agree that the amended order will subject applicants to the same conditions as imposed by the Prior Order. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

[2] If the amended order is granted, the New Funds would also be able to rely on an exemptive order granting certain relief from section 24(d) of the Act to the existing series of the Trust that are subject to the Prior Order. *See* iShares, Inc., *et al.*, Investment Company Act Release No. 25623 (June 25, 2002) (order).

[3] The Underlying Indices for the New Funds are Lehman Brothers 1–3 Year U.S. Credit Index (''1–3 Year Credit Index'') and Lehman Brothers U.S. MBS Fixed Rate Index (''MBS Index'').

[4] The Lehman Brothers U.S. Aggregate Index (''Aggregate Index'') is the underlying index of iShares U.S. Aggregate Bond Fund (''Aggregate Fund'').

[5] ''TBA'' refers to a mechanism for the forward settlement of United States agency mortgage-pass through securities that permits the United States agency mortgage-pass through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements. Applicants state that the use of TBA transactions permits investors to obtain exposure to U.S. agency mortgage pass-through securities, while promoting liquidity and price transparency.

[6] As with the process used by the Aggregate Fund, the MBS Fund may accept delivery of a specified amount of ''cash-in-lieu'' of delivery of the designated U.S. agency mortgage pass-through securities or TBAs. This practice could result in cash-only creations and redemptions. Applicants do not believe that the acceptance of ''cash-in-lieu'' of U.S. agency mortgage pass-through securities or TBAs on a regular basis by the MBS Fund presents any material or unforeseen operation issues or will otherwise have a negative impact on the operation of the MBS Fund or the secondary market trading of shares of the MBS Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8803 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53908]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Declaration of Effectiveness of the Fingerprint Plan of the NASDAQ Stock Market LLC

May 31, 2006.

On May 30, 2006, the NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a fingerprint plan (''Plan'') pursuant to Rule 17f–2(c)[1] under the Securities Exchange Act of 1934 (''Act'').[2]

Nasdaq believes that the Plan will facilitate compliance by Nasdaq members and Nasdaq member applicants (together, ''participants'') with section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder, by providing a facility for participants to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or his designee (''Attorney General'').

The Plan will be administered for Nasdaq by NASD Regulation, Inc. (''NASDR'') and the National Association of Securities Dealers, Inc. (''NASD''), the parent corporation of NASDR, pursuant to a regulatory services agreement between NASDR and Nasdaq (the ''Regulatory Contract''). The Commission notes that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract to have NASDR perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

Under the Plan, participants submit fingerprints and identifying information, on paper or electronically, to the NASD, which then forwards the cards to the Federal Bureau of Investigation (''FBI'') (the fingerprint processing arm of the Attorney General). The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports (including the original paper fingerprint cards, if any)

[1] 17 CFR 240.17f–2(c).

[2] 15 U.S.C. 78a *et seq.*

to authorized recipients (*i.e.*, to a participant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes). Under the terms of the Plan, participants will be able to view the status and results of fingerprints, including any relevant criminal history information, through the NASD's Central Registration Depository (CRD®) system after submission to the Attorney General.

The Commission has reviewed the procedures detailed in the Plan and believes that the Plan is consistent with the public interest and the protection of investors. Thus, the Commission declares the Plan to be effective.

The Commission notes that securities industry fingerprinting procedures are in a state of flux due to rapidly advancing technology. In the event that an industry-wide standard is adopted or becomes prevalent and in the event that this Plan substantially differs therefrom, the Commission would expect Nasdaq to revise its fingerprint plan to incorporate the industry-wide standard.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

J. Lynn Taylor,

Assistant Secretary.

Exhibit A—The NASDAQ Stock Market LLC; Fingerprint Plan

The NASDAQ Stock Market LLC (''Nasdaq'') submits this Fingerprint Plan (''Plan'') pursuant to Rule 17f–2(c) under the Securities Exchange Act of 1934 (''Exchange Act'').

The purpose of this Plan is to facilitate compliance by Nasdaq members and Nasdaq member applicants with section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder, by providing a mechanism for Nasdaq members and Nasdaq member applicants to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or his designee (hereinafter ''Attorney General'') as required by section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder. The Plan will be administered for Nasdaq by NASD Regulation, Inc. (''NASDR'') and the National Association of Securities Dealers, Inc. (''NASD''), the parent corporation of NASDR, pursuant to a regulatory services agreement between NASDR and Nasdaq (the ''Regulatory Contract''). In the event that Nasdaq enters into a contract to administer the Plan with a regulatory service provider other than NASDR or decides to administer the Plan itself, Nasdaq shall file an amendment to the Plan with the Securities and Exchange Commission (the ''Commission''). Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract to have NASDR perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

NASD, pursuant to a Plan filed with and declared effective by the Commission,[4] processes fingerprint records of securities industry participants as described herein consistent with section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder.

NASD accepts fingerprints and identifying information from associated persons of Nasdaq members and Nasdaq member applicants required to be fingerprinted pursuant to Rule 17f–2. Nasdaq members and Nasdaq member applicants may submit fingerprints and identifying information on paper or electronically, provided such submissions are consistent with protocols and requirements established by the Attorney General.

NASD transmits fingerprints and identifying information, on paper or electronically, to the Attorney General for identification and processing, consistent with protocols and requirements established by the Attorney General.

NASD receives processed results from the Attorney General (on paper or electronically) and transmits those results via paper or electronic means to authorized recipients (*i.e.*, to a Nasdaq member or Nasdaq member applicant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General. In cases where the Attorney General's search on the fingerprints submitted fails to disclose prior arrest data, NASD transmits that result to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. In cases where the Attorney General's search yields Criminal History Record Information (CHRI), NASD transmits that information to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. With respect to Nasdaq members, NASD also reviews any CHRI returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and notifies NASD and Nasdaq staff to take action, as appropriate, with respect to such persons.

Nasdaq advises its members and member applicants of the availability of fingerprint services and any fees charged in connection with those services and the processing of fingerprints pursuant to this Plan. Nasdaq will file any such Nasdaq member fees with the Commission pursuant to section 19(b) of the Exchange Act.

NASD maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by NASD pursuant to this Plan, in accordance with Nasdaq's record retention obligations under the Act. Any maintenance of fingerprint records by NASD shall be for NASD's and Nasdaq's own administrative purposes, and NASD is not undertaking to maintain fingerprint records on behalf of Nasdaq members pursuant to Rule 17f–2(d)(2). NASD records in the Central Registration Depository (CRD() the status of fingerprints submitted to the Attorney General. Through the CRD system, NASD makes available to a Nasdaq member that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

Neither NASD nor Nasdaq shall be liable for losses or damages of any kind in connection with fingerprinting services, as a result of a failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by NASD or Nasdaq or NASD's or Nasdaq's failure to take action in connection with this Plan.

[FR Doc. E6–8808 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 200.30–3(a)(17)(iii).

[4] Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53917; File No. SR–Amex–2005–116]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Written Compliance and Supervisory Controls

June 1, 2006.

I. Introduction

On November 7, 2005, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission

(''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the proposed rule change relating to written compliance and supervisory controls. Amex filed Amendment No. 1 to the proposed rule change on April 6, 2006. The proposed rule change was published for comment in the **Federal Register** on April 28, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange is proposing to amend Amex Rule 320 to require members and member organizations with employees to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules.[4] In addition to requiring that the written compliance and supervisory policies and procedures be amended as necessary, the proposed rule would require that a member's or member organization's supervisory control employee provide reports, at least annually, to senior management summarizing certain aspects of the compliance and supervisory program.[5]

In addition, the Exchange proposed clarifying edits to the text of Amex Rule 320, including: (1) Explicit references to a member's or member organization's obligation to comply with Exchange rules in addition to all applicable securities laws and regulations, and (2) replacing references to ''member firm'' with references to ''member organization.''

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] particularly section 6(b)(5) of the Act,[7] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to require its members and member organizations to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules should help strengthen the Exchange's regulatory program by increasing member awareness of the laws and rules with which they must comply. It should also provide members an additional incentive to be cognizant of changing regulatory requirements. The Exchange will review the adequacy of its members' and member organizations' compliance programs. Further, the requirement that Amex members and member organizations adopt comprehensive written compliance and supervisory policies and procedures, and report to senior management on certain aspects of the compliance and supervisory program, should result in the periodic assessment by members and member organizations of the effectiveness of their compliance programs. Accordingly, the proposed rule change should help Amex strengthen its regulatory program for detecting, sanctioning, and deterring violations of Exchange rules and securities laws and regulations and, therefore, should promote just and equitable principles of trade.[8] Furthermore, the Commission believes that the Amex's proposal should enhance investor protection by facilitating the Exchange's review of its members' and member organizations' systems of compliance and supervisory controls and by enhancing the compliance programs at the member level.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–Amex–2005–116), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8802 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53911; File No. SR–Amex–2006–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Direct Registration System Eligibility Requirements

May 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 28, 2006, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is proposing to add new Rule 778 to its Rules and new Section 135 to its Company Guide to require certain listed securities to be eligible for a Direct Registration System operated by a securities depository.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning

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[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53708 (April 24, 2006), 71 FR 25254.

[4] *See* proposed Amex Rule 320(e). An Amex member or member organization consisting of a sole individual (*i.e.*, a sole proprietorship) would be required to maintain a written compliance manual specifying the obligations to which such member or member organization is subject along with the processes and controls in place that are reasonably designed to achieve compliance with such obligations. *See* Amex Rule 320, proposed Commentary .08.

[5] *See* proposed Amex Rule 320(e)(3).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission notes that a national securities exchange must have the capacity to enforce compliance by its members with applicable securities laws, regulations and the exchange's own rules. *See e.g.*, section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''securities depository'' means a securities depository registered as a clearing agency under Section 17A(b)(2) of the Act.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to reduce the costs, risks, and delays associated with the physical delivery of securities certificates, Amex is proposing to require (i) all securities (other than the securities identified below) initially listing on Amex on or after January 1, 2007, to be eligible for a DRS and (ii) all securities (other than the securities identified below) listed on Amex on and after January 1, 2008, to be eligible for a DRS.[5] The initial listing requirement set forth in (i) above will not apply to securities of issuers which already have securities listed on the Amex, securities of issuers which immediately prior to such initial Amex listing had securities listed on another national securities exchange, derivative products,[6] or securities (other than stocks) which are book-entry-only. The ongoing listing requirement set forth in (ii) above will not apply to derivative products or securities (other than stocks) which are book-entry-only.

Securities certificates are used by issuers as a means to evidence and transfer ownership. Because securities certificates require manual processing and because trading volumes have increased, the manual clearance and settlement systems have become overburdened resulting in significant delays and expenses in processing securities transaction and in increased risks associated with lost, stolen, and forged certificates. In Section 17A of the Act,[7] Congress recognized these concerns by calling for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities.

A DRS allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry securities position on the books of the issuer and to electronically transfer that securities position between the transfer agent and the broker-dealer through facilities administered by DTC.[8] Instead of receiving a securities certificate, the investor receives a DRS statement as evidence of share ownership. Investors retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

Issuers and their transfer agents may incur initial costs when making an issue DRS-eligible and in turn satisfy the new listing standards as set forth in this proposed rule change. In order to make a security DRS-eligible, the issuer must have a transfer agent which is a DRS Limited Participants.[9] Issuers will also need to meet certain DTC criteria, such as insurance and connectivity requirements, in order to make an issue DRS-eligible. Further, an issuer's corporate by-laws must permit the issuance of book-entry shares. Amex believes that the proposed deadlines for DRS eligibility coupled with proactive and instructive communication by Amex with issuers, will allow issuers sufficient time to make the necessary changes to comply with the proposed rule change.

While the propose rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates after the settlement of securities transactions, provided the issuer chooses to issue or continue to issue certificates.

(2) Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10]

Amex believes that DRS eligibility listing requirements will limit market impediments arising from the physical delivery of securities certificates, thereby promoting the perfection of the national market system. Because investors will have the option of holding their securities in DRS only if the security is DRS-eligible, Amex believes that the proposed rule change is necessary to encourage listed issuers to limit the use of physical certificates. Further, the proposed rule change should serve to increase the efficiency of the clearance and settlement system and prevent forgery, theft, or other misappropriation thereby serving to better protect the public interest. Finally, because the costs, both direct and indirect, associated with securities certificates are ultimately borne by investors, Amex believes that investors in Amex listed securities covered by the proposed rule change should realize the benefits of accurate, quick, and cost-efficient transfers, rapid distribution of sale proceeds, reduced lost or stolen certificates and replacement fees, elimination of the risk associated with catastrophic events, and consistency of owning in book-entry across asset classes.

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[4] The Commission has modified the text of the summaries prepared by the Amex.

[5] The New York Stock Exchange LLC (''NYSE'') and The NASDAQ Stock Market LLC (''Nasdaq'') have also filed proposed rule changes with the Commission that would require certain listed companies to become DRS eligible. Securities Exchange Act Release Nos. 53912 (May 31, 2006) [File No. SR–NYSE–2006–29] and 53913 (May 31, 2006) [File No. SR–NASDAQ–2006–08].

[6] As defined in Article 1, Section 3(d) of Amex's Constitution, the term ''derivative products'' includes in addition to standardized options, other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities. The term ''derivative products'' does not include warrants of any type or closed-end management investment companies.

[7] 15 U.S.C. 78q–1.

[8] Currently, the only registered clearing agency operating a DRS is the Depository Trust Company (''DTC''). For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[9] For a description of DTC's rules relating to DRS Limited Participants and a description of DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[10] 15 U.S.C. 78f(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by Amex with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–40 in the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Amex and on Amex's Web site, *http://www.amex.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–40 and should be submitted on or before June 28, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–8817 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53909; File No. SR–CBOE–2005–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Processing of Complex Orders in the Hybrid Trading System

May 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment Nos. 1 and 2 to the proposal on March 13, 2006, and April 27, 2006, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its procedures applicable to trading complex orders on the Hybrid Trading System (''Hybrid System'') to provide for an automated Request for Responses (''RFR'') auction process for certain eligible complex orders (''COA'' process). CBOE is also proposing to make various changes to the existing routing and execution processes applicable to the complex order book (''COB'') and various changes to its rules pertaining generally to the minimum increments applicable to complex orders. The text of the proposed rule change appears below. Additions are *italicized*; deletions are [bracketed].

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

Rule 6.9. Solicited Transactions

A member or member organization representing an order respecting an option traded on the Exchange (an ''original order''), including a spread, combination, or straddle order as defined in Rule 6.53, a stock-option order as defined in Rule 1.1(ii) [or], a security future-option order as defined in Rule 1.1(zz), *or any other complex order as defined in Rule 6.53C,* may solicit a member or member organization or a non-member customer or broker-dealer (the ''solicited person'') to transact in-person or by order (a ''solicited order'') with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a)–(f) No change.

* * * Interpretations & Policies:

.01–.02 No change.

.03 In respect of any solicited order that is a spread, straddle or combination order as defined in Rule 6.53, *or any other complex order as defined in Rule*

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 replaces and supersedes the original filing and Amendment No. 1 in their entirety.

6.53C, the terms ''bid'' and ''offer'' as used in subparagraphs (a)–(d) of this Rule 6.9 mean ''total net debit'' and ''total net credit,'' respectively.

.04–.07 No change.

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

(1)–(2) No change.

(3) Bids and offers on spread, straddle, or combination orders as defined in Rule 6.53*, or any other complex order as defined in Rule 6.53C,* may be expressed in any increment*, and the legs of such an order may be executed in one cent increments,* regardless of the minimum increments otherwise appropriate to the individual legs of the order. Notwithstanding the foregoing sentence, bids and offers on spread, straddle*,* [or] combination*, or other complex* orders *as defined in Rule 6.53C,* in options on the S&P 500 Index *or on the S&P 100 Index,* except for box spreads, shall be expressed in decimal increments no smaller than $0.05. Spread, straddle*,* [or] combination*, or other complex* orders *as defined in Rule 6.53C* expressed in net price increments that are not multiples of the minimal increment are not entitled to the same priority under Rule 6.45 as such orders expressed in increments that are multiples of the minimum increment.

* * * Interpretations & Policies:

No change.

* * * * *

Rule 6.45. Priority of Bids and Offers—Allocation of Trades

(a)–(d) No change.

(e) *Complex Order Priority Exception:* A spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively)*, or any other complex order as defined in Rule 6.53C,* may be executed at a net debit or credit price (in a multiple of the minimum increment) with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

* * * * *

Rule 6.45A.—Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

(a) No change.

(b) Allocation of Orders Represented in Open Outcry: The allocation of orders that are represented in open outcry by floor brokers or PAR Officials shall be as described below in subparagraphs (b)(i) and (b)(ii). With respect to subparagraph (b)(ii), the floor broker or PAR Official representing the order shall determine the sequence in which bids (offers) are made.

(i)–(ii) No change.

(iii) Exception: Complex Order Priority: A spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively)*, or any other complex order as defined in Rule 6.53C,* may be executed at a net debit or credit price (in a multiple of the minimum increment) with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(iv) No change.

(c)–(e) No change.

* * * Interpretations and Policies:

No change.

* * * * *

Rule 6.45B—Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

(a) No change.

(b) Allocation of Orders Represented in Open Outcry: The allocation of orders that are represented in the trading crowd by floor brokers or PAR Officials shall be as described below in subparagraphs (b)(i) and (b)(ii). With respect to subparagraph (b)(ii), the floor broker or PAR Official representing the order shall determine the sequence in which bids (offers) are made.

(i)–(ii) No change.

(iii) Exception: Complex Order Priority: A member holding a spread, straddle, or combination order (or a stock-option order or security future-option order as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively)*, or any other complex order as defined in Rule 6.53C,* and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the electronic book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a), respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c)–(d) No change.

* * * Interpretations and Policies:

No change.

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Rule 6.53C. Complex Orders on the Hybrid System

RULE 6.53C. (a)–(b) No change.

(c) Complex Order Book

(i) No change.

[(ii) Priority of Complex Orders in the COB: Orders from public customers have priority over orders from non-public customers. Multiple public customer complex orders at the same price are accorded priority based on time.]

[(iii)] *(ii)* Execution of Complex Orders in the COB: *Notwithstanding the provisions of Rule 6.42, the appropriate Exchange committee will determine on a class-by-class basis whether complex orders that are routed to or resting in the COB may be expressed on a net price basis in a multiple of the minimum increment (i.e., $0.05 or $0.10, as applicable) or in a one cent increment. All pronouncements regarding COB increments will be announced to the membership via Regulatory Circular.* Complex orders resting in the COB may be executed without consideration to prices of the same complex orders that might be available on other exchanges*, and the legs of a complex order may be executed in one cent increments, regardless of the minimum quoting increments otherwise appropriate to the individual legs of the order.* Complex orders resting in the COB may trade in the following way:

(1) Orders *and Quotes* in the [Electronic Book ('']EBook['')]: A complex order in the COB will automatically execute against individual orders or quotes residing in EBook provided the complex order can be executed in full (or in a permissible ratio) by the orders *and quotes* in EBook.

(2) Orders in COB: Complex orders in the COB that are marketable against each other will automatically execute. *The allocation of a complex order within the COB shall be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs.*

(3) Market participants, as defined in [CBOE] Rule 6.45A *or 6.45B, as applicable*, may submit orders *or quotes* to trade against orders in the COB. The

allocation of complex orders among market participants shall be done pursuant to CBOE Rule 6.45A(c) *or 6.45B(c), as applicable.*

[(iv)] *(iii)* Complex orders in the COB may be designated as day orders or good-til-cancelled orders. Only those complex orders with no more than four legs and having a ratio of one-to-three or lower, as determined by the appropriate Exchange committee, are eligible for placement into the COB.

(d) *Process for Complex Order RFR Auction: Prior to routing to the COB or once on PAR, eligible complex orders may be subject to an automated request for responses (''RFR'') auction process.*

(i) For purposes of paragraph (d):

(1) ''COA'' is the automated complex order RFR auction process.

(2) A ''COA-eligible order'' means a complex order that, as determined by the appropriate Exchange committee on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size and complex order type, as defined in paragraph (a) above. All pronouncements regarding COA eligibility will be announced to the membership via Regulatory Circular. Complex orders processed through a COA may be executed without consideration to prices of the same complex orders that might be available on other exchanges.

(3) *The ''Response Time Interval'' means the period of time during which responses to the RFR may be entered.*

(ii) Initiation of a COA: On receipt of a COA-eligible order and request from the member representing the order that it be COA'd, the Exchange will send an RFR message to all members who have elected to receive RFR messages. The RFR message will identify the component series, the size of the COA-eligible order and any contingencies, if applicable, but will not identify the side of the market.

(iii) Bidding and Offering in Response to RFRs: Each Market-Maker with an appointment in the relevant option class, and each member acting as agent for orders resting at the top of the COB in the relevant options series, may submit responses to the RFR message (''RFR Responses'') during the Response Time Interval.

(1) RFR Response sizes will be limited to the size of the COA-eligible order for allocation purposes and may be expressed on a net price basis in a multiple of the minimum increment (i.e., $0.05 or $0.10, as applicable) or in a one cent increment as determined by the appropriate Exchange committee on a class-by-class basis. RFR Responses will not be visible (other than by the COA system).

(2) The appropriate Exchange committee will determine the length of the Response Time Interval on a class-by-class basis; provided, however, that the duration shall not exceed three (3) seconds.

All pronouncements regarding COA increments and the Response Time Interval will be announced to the membership via Regulatory Circular.

(iv) Processing of COA-Eligible Orders: At the expiration of the Response Time Interval, COA-eligible orders will be allocated in accordance with subparagraph (v) below or routed in accordance with subparagraph (vi) below.

(v) *Execution of COA-Eligible Orders: COA-eligible orders may be executed without consideration to prices of the same complex orders that might be available on other exchanges, and the legs of a COA-eligible order may be executed in one cent increments, regardless of the minimum quoting increments otherwise appropriate to the individual legs of the order. COA-eligible orders will trade first based on the best net price(s) and, at the same net price, will be allocated in the following way:*

(1) The individual orders and quotes residing in the EBook shall have first priority to trade against a COA-eligible order provided the COA-eligible order can be executed in full (or in a permissible ratio) by the orders and quotes in the EBook. The allocation of a COA-eligible order against the EBook shall be consistent with the UMA allocation described in Rule 6.45A or 6.45B, as applicable.

(2) Public customer complex orders resting in the COB before, or that are received during, the Response Time Interval and public customer RFR Responses shall, collectively have second priority to trade against a COA-eligible order. The allocation of a COA-eligible order against the public customer complex orders resting in the COB shall be according to time priority.

(*3) Non-public customer orders resting in the COB before the Response Time Interval shall have third priority to trade against a COA-eligible order. The allocation of a COA-eligible order against non-public customer orders resting in the COB shall be pursuant to the UMA allocation described in Rule 6.45A or 6.45B, as applicable.*

(4) Non-public customer orders resting in the COB that are received during the Response Time Interval and non-public customer RFR responses shall, collectively, have fourth priority. The allocation of a COA-eligible order against these opposing orders shall be consistent with the CUMA allocation described in Rule 6.45A or 6.45B, as applicable.

(vi) Routing of COA-Eligible Orders: If a COA-eligible order cannot be filled in whole or in a permissible ratio, the order (or any remaining balance) will route to the COB or back to PAR, as applicable.

(vii) Firm Quote Requirement for COA-Eligible Orders: RFR Responses represent non-firm interest that can be modified or withdrawn at any time prior to the end of the Response Time Interval. At the end of the Response Time Interval, RFR Responses shall be firm only with respect to the COA-eligible order for which it is submitted, provided that RFR Responses that exceed the size of a COA-eligible order are also eligible to trade with other incoming COA-eligible orders that are received during the Response Time Interval. Any RFR Responses not accepted in whole or in a permissible ratio will expire at the end of the Response Time Interval.

(viii) Handling of Unrelated Complex Orders: Incoming complex orders that are received prior to the expiration of the Response Time Interval for a COA-eligible order (the ''original COA'') will impact the original COA as follows:

(1) Incoming complex orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the opposite side of the market and are marketable against the starting price of the original COA-eligible order will cause the original COA to end. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same. For purposes of this Rule, the ''starting price,'' shall mean the better of the original COA-eligible order's limit price or the best price, on a net debit or credit basis, that existed in the EBook or COB at the beginning of the Response Time Interval.

(2) Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the same side of the market, at the same price or worse than the original COA-eligible order and better than or equal to the starting price will join the original COA. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order(s) shall be according to time priority.

(3) Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the

original COA that are on the same side of the market and at a better price than the original COA-eligible order will join the original COA, cause the original COA to end, and a new COA to begin for any remaining balance on the incoming COA-eligible order. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order shall be a according to time priority.

* * * Interpretations and Policies:

.01–.02 No change.

.03 With respect to the initiation of a COA (as described in Rule 6.53C(d)(ii)), members routing complex orders directly to the COB may request that the complex orders be COA'd on a class-by-class basis and members with resting complex orders on PAR may request that complex orders be COA'd on an order-by-order basis.

.04 A pattern or practice of submitting orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1.

.05 Disseminating information regarding COA-eligible orders to third parties will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 and other Exchange Rules.

* * * * *

Rule 6.74. Crossing Orders

(a)–(f) No change.

* * * Interpretations & Policies:

.01–.02 No change.

.03 Spread, straddle, stock-option (as defined in Rule 1.1(ii)), inter-regulatory spread as defined in Rule 1.1(ll) (including security future-option orders as defined in Rule 1.1(zz) [or], combination orders, *or any other complex orders as defined in Rule 6.53C* on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in paragraphs (a) or (b) above as appropriate. Members may not prevent a spread, straddle, stock-option, inter-regulatory spread (including a security future-option order), [or] combination, *or any other complex order* cross from being completed by giving a competing bid or offer for one component of such order.

.04–.08 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved Exchange Rule 6.53C, ''Complex Orders on the Hybrid System,'' which sets forth the procedures for trading complex orders on CBOE's Hybrid System.[4] As an enhancement to the current COB system, CBOE intends to develop a COA process, which the Exchange believes will, in turn, facilitate more automated handling of complex orders. The purpose of this proposed rule change is to adopt corresponding revisions to Exchange Rule 6.53C. In addition, CBOE is proposing to make certain changes to the existing COB provisions contained in Exchange Rule 6.53C to better describe the allocation methodology for executing orders in the COB. Lastly, CBOE is proposing to make certain modifications and clarifications to its rules generally pertaining to complex order minimum increments.

a. Automated RFR Auction Process for Complex Orders

Exchange Rule 6.53C sets forth the process for trading complex orders in the Hybrid System, including whether complex orders will be routed to a PAR workstation (for manual handling) or the complex order book (for automated handling) and, once in the COB, the manner in which complex orders execute against the electronic book (''the EBook''), orders resting in the COB, and market participants' orders submitted to trade against the COB. The proposed COA-related amendments will introduce new functionality that will give certain eligible complex orders an opportunity for price improvement before being booked in the COB or once on PAR.[5] Proposed paragraph (d) of Exchange Rule 6.53C will describe the COA process. The proposed rule change will give the appropriate Exchange committee the authority to determine on a class-by-class basis what incoming complex orders are eligible for a COA based on marketability (defined as a number of ticks away from the current market), size and the complex order type (''COA-eligible orders'').[6]

Upon receiving a COA-eligible order and a request by the member representing the order that it be COA'd,[7] the Exchange will send an RFR message to CBOE members with an interface connection to CBOE that have elected to receive such RFR messages. This RFR message will identify the component series, the size of the COA-eligible order and any contingencies, if applicable. However, the RFR message will *not* identify the side of the market (*i.e.*, whether the COA-eligible order is to buy or to sell).

Market-Makers with an appointment in the relevant options class, and members acting as agent for orders resting at the top of the COB in the relevant options series, may electronically submit responses (''RFR Responses''), and modify or withdraw them, at any time during the request response time interval (the ''Response Time Interval''). RFR Responses must be in a permissible ratio, and may be expressed on a net price basis in a multiple of the minimum increment (*i.e.*, $0.05 or $0.10, as applicable) or in a one-cent increment as determined by the appropriate Exchange committee on a class-by-class basis. In addition, RFR Response sizes will be limited to the size of the COA-eligible order for allocation purposes. RFR Responses will not be visible (other than by the COA system). The applicable Response Time Interval will be determined by the appropriate Exchange committee on a

[4] *See* Securities Exchange Act Release No. 51271 (February 28, 2005), 70 FR 10712 (March 4, 2005) (order approving File No. SR–CBOE–2004–45).

[5] Currently, stock-option orders, security futures-option orders, and conversions and reversals are not eligible for routing to COB and, similarly, will not be eligible for routing to COA.

[6] For example, the appropriate Exchange committee could determine that spread orders are eligible for a COA to the extent they are less than two ticks away from the ''top of the book,'' which would be the best price considering the net prices available in the complex order book and the individual component legs quoted in the CBOE market. All pronouncements, including changes thereto, regarding COA eligibility and Response Time Intervals will be announced to the membership via Regulatory Circular.

[7] Systemically, members will be able to make this request for incoming orders routing directly to COB on a class-by-class basis and for resting PAR orders on an order-by-order basis. If an incoming order is not COA-eligible or not designated for a COA, it will be routed to either PAR or the COB in accordance with Exchange Rule 6.53C(c)(i).

class-by-class basis and, in any event, will not exceed three seconds.[8]

When the Response Time Interval expires, the COA-eligible order will be executed and allocated to the extent it is marketable, or routed to the COB or back to PAR to the extent it is not marketable.[9] If executed, the rules of trading priority will provide that the COA-eligible order be executed based first on net price and, at the same net price: (i) The individual component orders and quotes in the EBook shall have first priority to trade against the COA-eligible order; (ii) public customer complex orders resting in the COB before, or that are received during, the Response Time Interval and public customer RFR Responses shall, collectively, have second priority; (iii) non-public customer complex orders resting in the COB before the Response Time Interval shall have third priority; and (iv) non-public customer complex orders resting in the COB that are received during the Response Time Interval and non-public customer RFR Responses shall, collectively, have fourth priority.[10] Allocations within the first category above (orders residing in the EBook) shall be based upon the Hybrid System ultimate matching algorithm (''UMA'') pertaining to equity options or index/exchange-traded fund options in Exchange Rules 6.45A and 6.45B, respectively, as applicable.[11] Allocations within the second category above (public customer complex orders resting in the COB and public customer RFR Responses) shall be based on time when multiple public customer complex orders or RFR Responses exist at the same price. Allocations within the third category above (non-public customer orders resting in the COB before the Response Time Interval) shall be based on the applicable UMA algorithm. Allocations within the fourth category above (non-public customer orders received during the Response Time Interval in the COB and non-public customer RFR Responses) shall be based on the Hybrid System ultimate matching algorithm in Exchange Rule 6.45A or 6.45B, as applicable, which caps the maximum quote size to be no greater than the underlying order for allocation purposes (''CUMA'').

The following is an example of a COA: assume the CBOE's derived spread market, considering the individual series prices in the EBook, is offered at $1.15 for 20 contracts. In addition, assume a public customer order resting in the COB is offered at $1.15 for five contracts and two non-public customer orders resting in the COB are offered at $1.15 for five contracts each (for a total of 10 contracts). A COA-eligible order is then received to buy 100 spreads at $1.15. COA will auction the order. An RFR message is sent to members indicating the complex order series and 100 contracts (but not the side of the market). The Response Time Interval for submitting RFR Responses will be for no more than three seconds. Before the conclusion of the Response Time Interval, the following RFR Responses on the offer side are received: Public customer RFR Responses to sell five at a price of $1.14 and five at a price of $1.15; and non-public customer RFR Responses to sell 15 at a price of $1.13, 35 at a price of $1.14, and 100 at a price of $1.15. The execution of the COA-eligible order will proceed as follows:

- 15 contracts get filled at $1.13 (against non-public customer RFR Responses);
- 40 contracts get filled at $1.14 (five contracts against public customer RFR Responses, then 35 contracts against non-public customer RFR Responses); and
- 45 contracts get filled at $1.15 (20 contracts against the individual series legs in the EBook allocated by UMA, then 10 contracts against the public customer orders in COB and public customer RFR Responses allocated by time priority, then 10 contracts against the non-public customer orders resting in the COB before the COA began allocated by UMA, then five contracts against the non-public customer RFR Responses allocated via CUMA).

The proposed rule change also describes the handling of unrelated incoming complex orders that may be received prior to the expiration of a COA.[12] Specifically, the proposed rule change provides the following:

- An incoming complex order received prior to the expiration of the Response Time Interval for a pending COA (the ''original COA'') that is on the opposite side of the original COA-eligible order and is marketable against the starting price[13] of the original COA-eligible order will cause the original COA to end. The processing of the original COA pursuant to proposed subparagraphs (d)(iv) through (d)(vi) of Exchange Rule 6.53C is the same. Specifically, the COA-eligible order will be allocated in accordance with proposed subparagraph (d)(v) of Exchange Rule 6.53C or, if the COA-eligible order cannot be filled in whole or in a permissible ratio, the order (or any remaining balance) will route to the COB or back to PAR, as applicable, in accordance with proposed subparagraph (d)(vi) of Exchange Rule 6.53C.[14]
- Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the same side

[8] For example, the appropriate Exchange committee could determine to set the timer for a particular class to a random time interval determined by the Exchange system between two and three seconds.

[9] For example, if no RFR Responses are received in the Response Time Interval and the COA-eligible order is not marketable against the individual orders and quotes in the EBook, the COA-eligible order would be routed to the COB or, as applicable, back to PAR at the expiration of the Response Time Interval. If routed to COB, the order would then be subject to execution in accordance with the provisions of Exchange Rule 6.53C(c)(iii) (proposed to be renumbered as Exchange Rule 6.53C(c)(ii)). If routed back to PAR, the member holding the order would have the ability to represent the order in open outcry, trade the order against the COB in accordance with Exchange Rule 6.53C(c)(iii)(3) (proposed to be renumbered as Exchange Rule 6.53C(c)(ii)(3)), or route the order to COB in accordance with Exchange Rule 6.53C(c)(i).

[10] RFR Responses that exceed the size of the COA-eligible order are also eligible to trade with other marketable COA-eligible orders that may be received during the Response Time Interval. *See* proposed Exchange Rule 6.53C(d)(vii) and (viii).

[11] Exchange Rule 6.45A pertains to the priority and allocation of trades in equity options on the Hybrid System. Exchange Rule 6.45B pertains to the priority and allocation of trades in index options and options on exchange-traded funds on the Hybrid System.

[12] *See* proposed Exchange Rule 6.53C(d)(viii). The COA system cannot be used to trade a COA-eligible order against a facilitated or solicited order. Instead, facilitations and solicitations of complex orders are subject to Interpretations and Policies .01 and .02 of Exchange Rule 6.45A (with respect to equity options) and Interpretations and Policies .01 and .02 of Exchange Rule 6.45B (with respect to index options and options on exchange-traded funds). These rules also apply to complex orders that are COA'd. Interpretation and Policy .01 of both Exchange Rules 6.45A and 6.45B pertains to principal transactions and prohibit an order entry firm from executing as principal against an order it represents as agent unless: (1) The agency order is first exposed on the Hybrid System for at least three seconds; (2) the order entry firm has been bidding or offering for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (3) the order entry firm proceeds in accordance with the crossing rules in Exchange Rule 6.74. Interpretation and Policy .02 of both Exchange Rules 6.45A and 6.45B pertains to solicitation orders and requires an order entry firm to expose for at least three seconds an order it represents as agent before the order may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with the order.

[13] The ''starting price,'' which is not visible (other than by the COA system), is the better of the original COA-eligible order's limit price or the best price, on a net debit or credit basis, that existed in the EBook or COB at the beginning of the Response Time Interval. *See* proposed Exchange Rule 6.53C(d)(viii)(1).

[14] For example, assume that a COA-eligible order to buy with a net price of $1.20 is received when the starting price is a net price of $1.10. A COA will be initiated at a net price of $1.10. An incoming order to sell at a price less than or equal to $1.10 will cause the COA to end. To the extent possible, the original COA-eligible order will be filled and any remaining balance would route to COB or back to PAR.

of the market, at the same price or worse than the original COA-eligible order and that are better than or equal to the starting price, will join the original COA. The processing of the original COA pursuant to proposed subparagraphs (d)(iv) through (d)(vi) of Exchange Rule 6.53C is the same (as described above) with the addition that the priority of the original COA-eligible order and incoming COA-eligible order(s) shall be according to time priority.[15]

• An incoming COA-eligible order that is received prior to the expiration of the Response Time Interval for the original COA that is on the same side of the market and at a better price than the original COA-eligible order will join the COA, cause the original COA to end, and a new COA to begin for any remaining balance on the incoming COA-eligible order. The processing of the original COA pursuant to proposed subparagraphs (d)(iv) through (d)(vi) of Exchange Rule 6.53C is the same (as described above), with the addition that the priority of the original COA-eligible order and incoming COA-eligible order shall be according to time priority.[16]

A pattern or practice of submitting unrelated orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 4.1, ''Just and Equitable Principles of Trade.'' Dissemination of information related to COA-eligible orders to third parties will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 4.1 and other Exchange rules.

In addition, the CBOE notes that COA-eligible orders may be executed without consideration of prices of the same complex orders that might be available on other exchanges.[17]

Finally, CBOE is proposing that RFR Responses be firm only to the extent they may exist at the end of the Response Time Interval and only with respect to COA-eligible orders. As such, RFR Responses that collectively exceed the size of a COA-eligible order would be eligible to trade with other incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval. Any RFR Response not accepted to trade against COA-eligible orders either in whole or in a permissible ratio would expire at the end of the Response Time Interval and would not be eligible to trade with the EBook or the COB.

b. Revisions to the Complex Order Book

CBOE is also proposing to make certain revisions to the existing complex order execution procedures to better describe the allocation algorithm applicable to the trading of complex orders that are entered into the COB. With respect to complex orders that trade against the EBook, the filing will clarify in renumbered paragraph (c)(ii)(1) of Exchange Rule 6.53C that the ''EBook'' consists of electronic orders and quotes residing in the Hybrid System, which would include public and non-public orders and market participants' quotes. With respect to complex orders that trade with other orders in the COB, renumbered paragraph (c)(ii)(2) of Exchange Rule 6.53C will provide that such trades will be allocated based on the rules of trading priority otherwise applicable to the individual component leg series in the EBook. With respect to the allocation of complex orders among market participants' orders submitted to trade against the COB, renumbered paragraph (c)(ii)(3) of Exchange Rule 6.53C will provide that market participants may enter both orders and quotes and that resulting trades will be allocated based on the rules of trading otherwise applicable to the interaction of quotes and/or orders with orders in the EBook in the individual component leg series contained in Exchange Rules 6.45A(c) or 6.45B(c), as applicable. Currently the rule text makes specific reference to only Exchange Rule 6.45A(c). The Exchange believes that these revisions will help to clarify and simplify the COB rules such that similar priority and allocation algorithms apply whether trading an individual series or a complex order.

The Exchange is also proposing to make some clarifications with respect to the minimum increments applicable to the pricing and trading of complex orders in the COB. Exchange Rule 6.42(3), ''Minimum Increments for Bids and Offers,'' currently provides that complex orders may be entered in any increment. This provision also applies to orders entered into the COB. However, CBOE is proposing to include a clarification in Exchange Rule 6.53C to provide that complex orders that are routed to, or resting in, the COB may be expressed on a net price basis only in a multiple of the minimum increment (*i.e.*, $0.05 or $0.10, as applicable) or in a one-cent increment as determined by the appropriate Exchange committee. As discussed further below, the Exchange is also proposing to clarify that the individual legs of a complex order entered into COB may be executed in one-cent increments.

c. Revisions Related to Complex Order Minimum Increments

The Exchange is proposing to revise and clarify the minimum increments that are permissible for bids and offers on complex orders. CBOE believes these changes will facilitate the orderly execution of complex orders in open outcry and via the COB and COA systems. With respect to minimum increments, Exchange Rule 6.42(3) currently provides that complex orders may generally be expressed in any increment, regardless of the minimum increment otherwise appropriate to the individual legs of the order. Thus, for example, a complex order could be entered at a net debit or credit price of $1.03 even though the standard minimum increment for the individual series is generally $0.05 or $0.10. As an exception to this provision, Exchange Rule 6.42(3) also provides that complex orders in options on the S&P 500 Index (''SPX'') that are not box spreads [18] are to be expressed in decimal increments no smaller than $0.05. The Exchange is proposing to amend this provision of Exchange Rule 6.42(3) to provide that complex orders in options on the S&P 100 Index (''OEX'') that are not box

[15] For example, assume that a COA-eligible order to buy with a net price of $1.20 is received when the starting price is a net price of $1.10. A COA will be initiated at a net price of $1.10. Incoming orders to buy at net prices ranging from $1.10 to $1.20 will join the COA. To the extent possible, the original COA-eligible order will be filled and then the incoming COA-eligible order will be filled. Any remaining balance on either the original COA-eligible order or the incoming COA-eligible order will route to COB or back to PAR.

[16] For example, assume that a COA-eligible order to buy with a net price of $1.20 is received when the starting price is a net price of $1.10. A COA will be initiated at a net price of $1.10. An incoming order to buy at a net price higher than $1.20 will join the COA, cause the COA to end, and a new COA to begin for any remaining balance of the incoming order. To the extent possible, the original COA-eligible order will be filled, and then the incoming COA-eligible order will be filled. Any remaining balance on the original COA-eligible order will route to COB or back to PAR. Any remaining balance on the incoming COA-eligible order will be subject to a new COA.

[17] This principle also applies currently to complex orders that are executed through the COB. *See* Exchange Rule 6.53C(c)(iii).

[18] A ''box spread'' (also referred to as a ''box/roll spread'') means ''an aggregation of positions in a long call option and short put option with the same exercise price ('buy side') coupled with a long put option and short call option with the same exercise price ('sell side' all of which have the same aggregate current underlying value, and are structured as either: (A) a 'long box spread' in which the sell side exercise price exceeds the buy side exercise price or (B) a 'short box spread' in which the buy side exercise price exceeds the sell side exercise price.'' *See* Exchange Rule 6.42, Interpretation and Policy .05, and Exchange Rule 6.53C(a)(7).

spreads must be expressed in decimal increments no smaller than $0.05. Thus, the minimum increment applicable to OEX options will be the same as that which is currently applicable to SPX options. The Exchange believes that this change is appropriate given the complexity of these orders and the size of the underlying S&P 100 Index. As discussed above, the Exchange is also proposing to clarify in Exchange Rule 6.53C that complex orders entered into and resting in the COB may be expressed on a net price basis in a multiple of the minimum increment (*i.e.*, $0.05 or $0.10, as applicable) or in a one-cent increment as determined by the appropriate Exchange committee on a class-by-class basis.

The Exchange is also proposing to make some clarifications with respect to the execution of the individual legs of a complex order. By way of background, after a complex order has been executed at the total net debit or credit price, the contract quantity and price for each individual component leg of the trade are reported as executions. However, the Exchange's rules are silent as to the minimum increment in which these resulting legs may be reported for execution. In the past, when a complex order was expressed in increments smaller than $0.05 or $0.10 in open outcry, each of the component legs of a resulting trade typically would be reported in ''split'' prices in order to reach the quoted debit or credit price. However, with the introduction of the COB, that system may report the legs of a resulting trade in one-cent increments. Because the Exchange rules do not specifically address the minimum increment in which the legs of a resulting complex order transaction are to be reported, CBOE is proposing to include language in Exchange Rules 6.42 and 6.53C to clarify that the legs of a complex order may be executed in open outcry, via COB or via a COA in one-cent increments, regardless of the minimum quoting increments otherwise appropriate to the individual legs of the order. This change applies a consistent standard for reporting the legs of a complex order transaction whether the transaction takes place in open outcry or via electronic trading, and the Exchange believes that it will enable members to more efficiently execute transactions with less component parts in the transaction.

Lastly, the Exchange is proposing to update the provisions of its rules that refer to the trading of various types of complex orders such as spreads, straddles and combinations. These provisions will now include a cross reference to the various other types of complex orders defined in Exchange Rule 6.53C.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2005–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–65 and should be submitted on or before June 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8801 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53922; File No. SR–CBOE–2006–52]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Extending the Exchange's Preferred Market-Maker Pilot Program

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis, for a pilot period through June 2, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend the Preferred Market-Maker Pilot Program for one year, until June 2, 2007. The text of the proposed rule change is set forth below. Brackets indicate deletions; *italics* indicates new text.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 8.13 Preferred Market-Maker Program

(a) Generally. The Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a Market-Maker in that class as the ''Preferred Market-Maker'' for that order. A qualifying recipient of a Preferred Market-Maker order shall be afforded a participation entitlement as set forth in subparagraph (c) below. The Preferred Market-Maker Program shall be in effect until June 2, 200*7*[6] on a pilot basis.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In June 2005, CBOE obtained approval of a filing adopting a Preferred DPM Program.[3] This allowed order providers to send orders to the Exchange designating a Preferred DPM from among the DPM complex. If the Preferred DPM was quoting at the NBBO at the time the order was received by CBOE, the Preferred DPM was entitled to the entire DPM participation entitlement. The Exchange subsequently modified the applicable participation entitlement percentages under the program[4] and, then expanded the scope of the program to apply to qualifying Market-Makers (as opposed to just DPMs).[5] At that time, the program was renamed the Preferred Market-Maker Program.

CBOE Rule 8.13 establishes a Preferred Market-Maker Program on a pilot basis. The pilot is due to expire on June 2, 2006. CBOE proposes extending the pilot program an additional year, until June 2, 2007. According to CBOE, since the pilot program was put into operation it has been positively received by the options trading community. CBOE believes that there has not been any adverse or unanticipated negative impact on the market by the presence of the Preferred Market-Maker Program. Further, CBOE believes that the pilot program helps generate greater order flow for the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act and whether the pilot time frame is appropriate. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (approving SR–CBOE–2004–71).

[4] *See* Securities Exchange Act Release Nos. 51824 (June 10, 2005), 70 FR 35476 (June 20, 2005) (approving SR–CBOE–2005–45); and 52021 (July 13, 2005), 70 FR 41462 (July 19, 2005) (approving SR–CBOE–2005–50).

[5] *See* Securities Exchange Act Release No. 52506 (September 23, 2005), 70 FR 57340 (September 30, 2005) (approving SR–CBOE–2005–58).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–52 and should be submitted on or before June 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Exchange has asked the Commission to approve the proposed rule change on an accelerated basis for an additional year so that the pilot program may continue uninterrupted. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of section 6(b)(5) of the Act.[10] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the current pilot was approved on a one-year basis to give the Commission an opportunity to evaluate the impact of the pilot program on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. The Commission believes that a one-year extension of the pilot period would provide the Commission with additional time to continue evaluate the Exchange's Preferred Market-Maker Program.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[11] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2006–52), which institutes the pilot program through June 2, 2007, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8805 Filed 6–6–06; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53921; File No. SR–ISE–2006–28]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Pilot Period for Preferenced Orders

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis, for a pilot period through June 10, 2007.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program for Preferenced Orders until June 10, 2007. The text of the proposed rule change is set forth below. Brackets indicate deletions; *italics* indicates new text.

* * * * *

Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

Supplementary Material to Rule 713

.01 through .02 no change.

.03 Preferenced Orders. For a pilot period ending [June 10, 2006] *June 10, 2007*, an Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').

(a) through (c) no change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change is to extend, until June 10, 2007, the pilot period for preferenced orders as provided in paragraph .03 of the Supplementary Material to ISE Rule 713. The proposal amends ISE's procedure for allocating trades among market makers and non-customer orders under ISE Rule 713 to provide an enhanced allocation to a ''Preferred Market Maker'' when it is quoting at the national best bid or offer (''NBBO''). Specifically, under the proposal, an Electronic Access Member may designate any market maker appointed to an options class to be a Preferred Market Maker on orders it enters into the Exchange's system (''Preferenced Orders''). If the Preferred Market Maker is not quoting at the NBBO at the time

the Preferenced Order is received, the Exchange's existing allocation and execution procedures will be applied to the execution.[3] The proposed rule is subject to a pilot program that is currently set to expire on June 10, 2006.[4]

Under the proposal, if a Preferred Market Maker is quoting at the NBBO at the time a Preferenced Order is received, the allocation procedure is modified so that the Preferred Market Maker (instead of the Primary Market Maker[5]) would receive an enhanced allocation equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote; or (ii) sixty percent of the contracts to be allocated if there is only one other Non-Customer Order or market maker quotation at the best price and forty percent if there are two or more other Non-Customer Orders and/or market maker quotes at the best price.[6] Unexecuted contracts remaining after the Preferred Market Maker's allocation would be allocated pro-rata based on size as described above.

The Exchange believes the proposed rule change is a necessary competitive response to the preferencing rules adopted by other options exchanges and would help the ISE attract and retain order flow. The Exchange believes that this order flow would add depth and liquidity to the Exchange's markets and enable the Exchange to continue to compete effectively with other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that extension of the pilot program would allow the Exchange and the Commission to evaluate the rule change over an additional one-year period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act and whether the pilot time frame is appropriate. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2006–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–28 and should be submitted on or before June 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Exchange has asked the Commission to approve the proposed rule change on an accelerated basis for an additional year in order to avoid disruption in the operation of the market. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular, the requirements of section 6(b)(5) of the Act.[11] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the current pilot was approved for a total of one year[12] to give the Commission an opportunity to evaluate the impact of the pilot program on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. The Commission believes that a one-year extension of the pilot period would provide the Commission with additional

[3] Marketable customer orders are not automatically executed at prices inferior to the NBBO. If the ISE best bid or offer is inferior to the NBBO, it is handled by the Primary Market Maker according to ISE Rule 803(c).

[4] *See* Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005).

[5] A Primary Market Maker may be the Preferenced Market Maker, in which case such market maker would receive the enhanced allocation for Preferenced Market Makers.

[6] All allocations are automatically performed by the Exchange's system.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission initially approved the Exchange's Preferenced Order program on a six week pilot basis while the Commission sought comment on the proposed rule change. *See* Securities Exchange Act Release No. 51818 (June 10, 2006), 70 FR 35146 (June 16, 2006). The Commission subsequently extended to the pilot period until June 10, 2006, which was one year from the date the Commission first approved the Exchange's Preferenced Order program on a pilot basis. *See* Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005).

time to continue to evaluate the Exchange's Preferenced Order program.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2006–28), which institutes the pilot program through June 10, 2007, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8804 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53910; File No. SR–ISE–2006–22]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

May 31, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On May 18, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on two Premium Products.[6] The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following two Premium Products: iShares S&P 500 Index Fund (''IVV'')[7] and iShares MSCI Hong Kong Index Fund (''EWH'').[8] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IVV and EWH.[9] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[10] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions and all non-ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions and non-ISE Market Maker transactions in equity options.[11] All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain clarifying changes to the purpose section regarding fees charged to non-ISE market makers for transactions in options on the Premium Products that are the subject of this filing. These changes did not affect the fees covered by this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] ''Premium Products'' is defined in the ISE's Schedule of Fees as the products enumerated therein. The Exchange represents that the Premium Products that are the subject of this proposed rule change, iShares S&P 500 Index Fund and iShares MSCI Hong Kong Index Fund, constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

[7] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill''), and have been licensed for use for certain purposes by BGI. IVV is not sponsored, sold or endorsed by Standard & Poor's, (''S&P''), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in IVV. BGI, McGraw-Hill and S&P have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IVV or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IVV or with making disclosures concerning options on IVV under any applicable federal or state laws, rules or regulations. BGI, McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] iShares® is a registered trademark of BGI, a wholly owned subsidiary of Barclays Bank PLC. ''MSCI Hong Kong Index'' is a service mark of Morgan Stanley Capital International (''MSCI'') and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. EWH is not sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWH or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWH or with making disclosures concerning options on EWH under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[9] The Exchange represents that these fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

[10] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[11] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on May 31, 2006.

introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange proposes to remove SWH (Software HOLDRS) from the list of Premium Products on the Schedule of Fees. SWH has been delisted from ISE and no longer trades on the Exchange.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act [12] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. [15]

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] The effective date of the original proposed rule is April 26, 2006. The effective date of Amendment No. 1 is May 18, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 18, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–22 and should be submitted on or before June 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8806 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53914; File No. SR–ISE–2006–25]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

May 31, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On May 23, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on two Premium Products.[6] The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 added clarifying language to the purpose section of the filing regarding fees charged to non-ISE Market Makers for transactions in options on the Premium Products and made a technical change to the text of Exhibit 5 (ISE's Schedule of Fees) correcting the symbol for the Mini FTSE 100 Index from UKZ to UKX. The correction to Exhibit 5 does not affect the fees covered by this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following two Premium Products: Mini FTSE 100 Index (''UKX'') and Mini FTSE 250 Index (''FTZ'').[7] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on UKX and FTZ.[8] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[9] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions and all non-ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions and non-ISE Market Maker transactions in equity options.[10] All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into a license agreement with FTSE International Limited in connection with the listing and trading of options on UKX and FTZ. As with certain other licensed options, the Exchange is adopting a fee of ten (10) cents per contract for trading in these options to defray the licensing costs. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, ISE Market Maker, non-ISE Market Maker & Firm Proprietary orders) and shall apply to Linkage Orders[11] under a pilot program that is set to expire on July 31, 2006. Further, since options on UKX and FTZ are not multiply-listed, the Payment for Order Flow fee shall not apply.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,[12] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[7] *See* Securities Exchange Act Release No. 53484 (March 14, 2006), 71 FR 14268 (March 21, 2006) (SR-ISE–2005–25) (order approving the trading of options on full and reduced values of the FTSE 100 Index and FTSE 250 Index, including Long-Term Options).

[8] The Exchange represents that these fees will be only charged to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

[9] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[10] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley, Special Counsel, Division of Market Regulation, Commission, on May 31, 2006.

[11] *See* ISE Rule 1900.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] The effective date of the original proposed rule is May 5, 2006. The effective date of Amendment No. 1 is May 23, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 23, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–25 and should be submitted on or before June 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8807 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53913; File No. SR–NASDAQ–2006–008]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The NASDAQ Stock Market LLC To Require Securities Be Eligible for a Direct Registration System

May 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to require securities to be eligible for a Direct Registration System (''DRS'').[3] The text of the proposed rule change is below. Proposed new language is in *italics*, and proposed deletions are in brackets.[4]

Rule 4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

(a)–(k) No change.

(l) Direct Registration Program

(1) All securities initially listing on Nasdaq on or after January 1, 2007, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) additional classes of securities of companies which already have securities listed on Nasdaq; (ii) companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S.; or, (iii) non-equity securities which are book-entry-only.

(2) On and after January 1, 2008, all securities listed on Nasdaq (except non-equity securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.

(3) If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a [securities depository] clearing agency registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program.

(m)–(n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Rule 4350(l) currently allows an issuer to establish a DRS for its shareholders provided the issuer, directly or through its transfer agent, participates in an electronic link with a clearing agency registered under Section 17A of the Exchange Act. DRS permits an investor's ownership position to be recorded and maintained in book-entry form on the records of the issuer or its transfer agent. Because ownership positions are recorded in book-entry form, investors receive an account statement from the issuer or its transfer agent as evidence of ownership instead of receiving a physical certificate. Brokerage firms and transfer agents are linked through an electronic system administered by The Depository Trust Company (''DTC'') thereby permitting securities positions to be electronically transferred between a broker-dealer and a transfer agent without the need to transfer for physical certificates.[6]

Nasdaq believes that DRS will be an important step in reducing the use of physical certificates which will facilitate efficiencies and reduced risks in securities transactions and could eventually lead to lower costs for issuers and investors.[7] As such, to encourage the use of DRS, Nasdaq is proposing to amend its rules to require that all listed securities be eligible to participate in DRS.[8] While this proposed rule change would require that issuers' securities be eligible for DRS, it would not require issuers to participate in DRS and would

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq refers to a Direct Registration System as a Direct Registration Program. For purposes of clarity and consistency with other related filings referred to below, the term Direct Registration System or DRS will be used in place of Direct Registration Program or DRP in this notice.

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://www.nasdaqtrader.com*. These rules will become effective when Nasdaq fulfills certain conditions and commences operations as a national securities exchange, which became effective April 17, 2006, but has not yet been published. *See* Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) [File No. 10–131]. Nasdaq modified the title to Rule 4350. This filing reflects the revised title.

[5] The Commission has modified portions of the text of the summaries prepared by the Nasdaq.

[6] Currently, the only registered clearing agency operating a DRS is DTC. For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[7] In March 2004, the Commission published a concept release that discussed, among other things, whether more should be done to reduce the use of physical certificates by individual investors. The Commission noted that the use of physical certificates increases the costs and risks of clearing and settling securities transactions, costs that most often are ultimately born by investors. Securities Exchange Act Release 8398 (March 11, 2004), 69 FR 12922 (March 18, 2004) [File No. S7–13–04] (Securities Transaction Settlement concept release).

[8] The New York Stock Exchange LLC and the American Stock Exchange LLC have also filed proposed rule changes with the Commission that would require certain listed companies securities DRS eligible. Securities Exchange Act Release Nos. 53912 (May 31, 2006) [File No. SR–NYSE–2006–29] and 53911 (May 31, 2006) [File No. SR–Amex–2006–40].

not mandate the elimination of physical certificates. As a result, subject to applicable state law and the company's governing documents, an investor could still elect to receive a certificate if the issuer chose to make certificates available.

Because currently the only DRS operated by a registered clearing agency is that of DTC, in order for a security to be eligible to participate in DRS, the issuer is required to use a transfer agent that meets DTC's insurance and connectivity requirements. As a result, some transfer agents acting for Nasdaq issuers may have to make changes to comply with these requirements, and some issuers may choose to change transfer agents. Certain issuers may also have to make amendments to their governing documents, such as their by-laws, to be eligible to issue securities that are not represented by certificates. To allow sufficient time for any of these changes that need to take place, Nasdaq proposes to implement the proposed rule change January 1, 2008, for the securities of issuers with securities already listed on Nasdaq or another listed marketplace at the time the proposed rule change is approved. Companies listing for the first time should have greater flexibility to adopt any changes required to have their securities DRS eligible and therefore, the proposed rule change requirement would be applicable to new listings beginning January 1, 2007. In addition, Nasdaq proposes that the requirement not apply to non-equity securities that are held in book-entry-only form.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9] Nasdaq believes that requiring securities to be eligible for DRS will ease the trading of securities in book-entry form, which will facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 7, 2005, Nasdaq solicited comment from issuers on the impact of a rule requiring securities to be eligible for DRS. Nasdaq received nine responses to this solicitation, all from representatives of issuers. Eight responses, including five participants in DRS, were supportive citing factors such as cost savings, shareholder service, and efficiency. One respondent was opposed because of the associated costs and perceived negative response of shareholders. Nasdaq notes, however, that the concerns expressed by this commenter may not be applicable to this proposed rule change because this proposal would not mandate the use of DRS.[10]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–008 in the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site, *http://www.nasdaq.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–008 and should be submitted on or before June 28, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–8819 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] Nasdaq's solicitation and the comments received are attached as Exhibit 2 to this proposed rule change, which can be found at *www.nasd.com.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53920; File No. SR–NASD–2006–039]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend NASD Rules To Modify and Expand NASD's Authority To Initiate Trading and Quotation Halts in OTC Equity Securities

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On May 23, 2006, NASD filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to (1) amend NASD rules to modify and expand NASD's authority to initiate trading and quotation halts in over-the-counter (''OTC'') equity securities;[4] and (2) adopt IM–6660–1 to identify certain factors that NASD may consider in determining, in its discretion, whether imposing a trading and quotation halt in an OTC equity security is appropriate. Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in brackets.[5]

* * * * *

[6545]*6660*. Trading and Quotation Halt in OTC[BB-Eligible] *Equity* Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in *OTC Equity Securities (as such term is defined in Rule 6610)*[the over-the-counter (''OTC'') market of a security or an American Depository Receipt (''ADR''), that is included in the OTC Bulletin Board (''OTCBB'')] if:

(1) The OTC[BB] *Equity* S[s]ecurity or the security underlying *an American Depository Receipt (''ADR'') that is an OTC Equity Security (''OTC ADR'')*[the OTCBB ADR] is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns (''Foreign Regulatory Halt''); provided, however, that NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; [or]

(2) The OTC[BB] *Equity S*[s]ecurity or the security underlying [the]*an* OTC[BB] ADR is a derivative or component of a security listed on or registered with a national securities exchange, The Nasdaq Stock Market, or foreign securities exchange or market (''listed security'') and the national securities exchange, The Nasdaq Stock Market, or foreign securities exchange or market, imposes a trading halt in the listed security[.]*; or*

(3) *NASD determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process.* [the issuer of the OTCBB security or the security underlying the OTCBB ADR fails to comply with the requirements of SEC Rule 10b–17 regarding Untimely Announcements of Record Dates.]

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTC[BB] *Equity S*[s]ecurity or the security underlying the OTC[BB] ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTC[BB] *Equity S*[s]ecurity is appropriate.

(2) Should NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when NASD determines that the basis for the halt no longer exists, or when [five] *ten* business days have elapsed from the date NASD initiated the trading and quotation halt in the security, whichever occurs first. NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) Violation of OTC[BB] Trading and Quotation Halt Rule

If a security is subject to a trading and quotation halt initiated pursuant to this rule, it shall be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member:

(1) To effect, directly or indirectly, a trade in such security; or

(2) To publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' and ''offer wanted'' indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any quotation medium. For purposes of this rule, ''quotation medium'' shall mean any: system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations to others.

* * * * *

IM–6660–1 Factors To Be Considered When Initiating a Trading and Quotation Halt

NASD may impose a trading and quotation halt in an OTC Equity Security pursuant to Rule 6660(a)(3) where NASD determines, in its discretion, based on the facts and circumstances of the particular event, that halting trading in the security is the appropriate mechanism to protect investors and ensure a fair and orderly marketplace. As a general matter, NASD does not favor imposing a trading and quotation halt in an OTC Equity

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replace and susperseded the original rule filing in its entirety.

[4] *See* NASD Rule 6610.

[5] The proposed rule text incorporates certain technical corrections that NASD will incorporate into an amendment that it will file with the Commission before approval of the proposed rule change. Telephone conversation between Kosha Dalal, Associate General Counsel, NASD and Tim Fox, Special Counsel, Commission on June 1, 2006.

Security and will exercise this authority in very limited circumstances. In determining whether to impose a trading halt under Rule 6660(a)(3), NASD will consider several factors in making its determination, including but not limited to: (1) The material nature of the event; (2) the material facts surrounding the event are undisputed and not in conflict; (3) the event has caused widespread confusion in the trading of the security; (4) there has been a material negative effect on the market for the subject security; (5) the potential exists for a major disruption to the marketplace; (6) there is significant uncertainty in the settlement and clearance process for the security; and/or (7) such other factors as NASD deems relevant in making its determination. NASD may review all or some of these factors as it determines appropriate.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective October 1, 2005, NASD transferred ownership and operations of the OTC Bulletin Board (''OTCBB'') from The Nasdaq Stock Market, Inc. (''Nasdaq'') to NASD. Prompted in part by the transition of the OTCBB, NASD has been analyzing the regulatory framework in this sector of the marketplace to determine whether changes in this area are appropriate.[6] As part of this ongoing effort, NASD is proposing several changes related to its current authority under NASD Rule 6545 to halt trading and quotations in the OTC market of a security or American Depository Receipt (''ADR'') that is included in the OTCBB.

Generally, national securities exchanges, such as the New York Stock Exchange LLC (''NYSE'') as well as Nasdaq, have the authority to halt trading and quotations in a security listed on such exchange.[7] Issuers that have securities listed on a national securities exchange enter into a listing agreement with such exchange that provides, among other things, that such issuer will give timely notice of material news affecting the security or issuer. Such exchanges generally have the authority to halt trading and quotations in a security to allow a company to announce important news or where there is a significant order imbalance between buyers and sellers in a security.

NASD, however, does not have a listing agreement or similar relationship with issuers of OTC Equity Securities[8] and cannot compel such issuers to disclose material information. As a result, NASD currently has limited trade halt authority with respect to these securities. Specifically, NASD Rule 6545(a) currently provides NASD with authority to halt trading and quotations of OTCBB securities only where: (1) The OTCBB security (or security underlying an OTCBB ADR) is listed on or registered with a foreign market and the foreign regulatory authority or market halts trading in the security; (2) the OTCBB security (or the security underlying the OTCBB ADR) is a derivative or component of a security listed on or registered with Nasdaq, a national securities exchange or foreign exchange and the exchange or market halts trading in the underlying security; or (3) the OTCBB issuer fails to comply with the requirements of Rule 10b–17 under the Act,[9] which generally requires the issuer of a class of securities that are publicly traded to give notice to NASD no later than 10 days prior to the record date of a dividend or distribution. Pursuant to NASD Rule 6545, NASD has authority to halt trading and quotations of OTCBB-eligible securities for up to five business days.

NASD is proposing four amendments to expand its current authority to halt trading and quotations:

First, NASD is proposing to expand the scope of its current trade halt authority to include authority to halt trading and quotations in all OTC Equity Securities, which includes ADRs that trade in the OTC market. NASD's existing trading halt authority is limited to OTCBB securities and therefore NASD does not have authority to impose trading or quotation halts in other OTC Equity Securities (*e.g.*, securities quoted exclusively on the Pink Sheets). NASD believes that its trading and quotation halt authority should apply uniformly to all OTC Equity Securities and is therefore proposing to expand NASD's existing trading halt authority to all OTC Equity Securities.[10] NASD believes that eliminating this disparity will further investor protections in this area of the securities market.

Second, NASD is proposing to modify and expand NASD's existing trading halt authority to provide more general trading and quotation halt authority beyond halts related to non-compliance with Rule 10b–17, while limiting such authority to only those extraordinary events that have a material effect on the market for the OTC Equity Security and that have the potential to cause major disruption to the marketplace and/or cause significant uncertainty in the settlement and clearance process. Specifically, the proposed trading and quotation halt authority would provide NASD with the ability to impose a trading and quotation halt for material events, where NASD determines, in its discretion, based on the facts and circumstances of the particular event, that halting trading in the security is the appropriate mechanism to protect investors and ensure a fair and orderly marketplace.

Third, NASD is proposing to increase the maximum number of business days that it can impose a trading and quotation halt from up to five business days to ten business days. NASD believes that a period of up to ten business days is consistent with the maximum duration that the Commission is permitted to suspend trading in securities in accordance with section

[6] *See, e.g.*, Securities Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006) (SR–NASD–2005–112) (approving amendments to NASD Rule 3360 to expand the short interest reporting requirements to OTC equity securities).

[7] *See, e.g.*, NYSE Rule 80B (Circuit Breakers); Section 202.06 of the NYSE Listed Company Manual (Procedure for Public Release of Information); and NASD Rule 4120 (Trading Halts).

[8] The term ''OTC Equity Security'' as used in proposed NASD Rule 6660 is defined in NASD Rule 6610(d), as may be amended from time to time. NASD Rule 6610(d) provides that the term means any equity security not classified as a ''designated security,'' for purposes of the NASD Rule 4630 and 4640 Series. This term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not ''eligible securities'' as defined in NASD Rule 6410(d). The term ''OTC Equity Security'' does not include ''restricted securities,'' as defined by Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market under the NASD Rule 5300 Series.

[9] 17 CFR 240.10b–17.

[10] In addition, because the current NASD Rule 6500 Series relates solely to OTCBB securities, NASD is proposing to renumber the amended NASD Rule 6545 as NASD Rule 6660, which would be part of the NASD Rule 6600 Series (OTC Equity Securities).

12(k) of the Act.[11] NASD believes increasing the maximum number of days from five to ten business days will allow more time for regulators to act and for the market of the subject security to stabilize.

Fourth, NASD is proposing to adopt IM–6660–1 to identify certain factors that NASD may consider in determining, in its discretion, whether halting trading in an OTC Equity Security under proposed NASD Rule 6660(a)(3) is appropriate. Proposed IM–6660–1 provides that as a general matter, NASD would not favor imposing a trading halt and thus would exercise this authority in very limited circumstances. It identifies factors that NASD would consider in determining whether to impose a trading halt under this expanded authority. Specifically, IM–6660–1 provides that NASD would consider several factors in making its determination, including but not limited to: (1) The material nature of the event; (2) whether the material facts surrounding the event are undisputed and not in conflict; (3) whether the event has caused widespread confusion in the trading of the security; (4) whether there has been a material negative effect on the market for the subject security; (5) whether the potential exists for a major disruption to the marketplace; (6) whether there is significant uncertainty in the settlement and clearance process for the security; and/or (7) such other factors as NASD deems relevant in making its determination. NASD may review all or some of these factors as it determines appropriate. NASD staff would weigh the relevant information and make a determination whether halting trading in the security is appropriate and may consult with NASD's Uniform Practice Code (''UPC'') Committee (or any successor thereto) as it deems necessary or appropriate.[12]

NASD is proposing to expand its trading and quotation halt authority in the OTC market at this time in large part due to several recent events, for which NASD believes that having this type of authority would have been beneficial to investors and the marketplace. For example, in 2005, an issuer announced that 3 million shares of its common stock, an OTC Equity Security, were issued improperly prior to the impending payment of a 3 million for 1 share dividend (*i.e.*, a forward split) in the security. As a result, significant questions arose regarding the accuracy of publicly disseminated information concerning the issuer, including the total shares outstanding, the availability of non-restricted shares for trading and delivery, the issuer's shareholders, and rights with respect to shares of the issuer. The impact of this event was far-reaching, including widespread investor confusion and the potential for several large clearing firms to be forced to recognize substantial net capital charges on their short positions and open fails.[13]

Based on NASD's experience to date, each event presents a unique set of facts and circumstances. As a result, NASD would exercise significant discretion in determining whether a particular event affecting a security warranted a trading and quotation halt. The authority would not be used to correct informational imbalances resulting from corporate news about the issuer (*e.g.*, financial results, release of new product, or pending regulatory investigation) because NASD has no listing or other agreement with the issuer of an OTC Equity Security and therefore cannot compel such issuers to disclose material information.

It is important to note that for OTC Equity Securities, quoting may not automatically resume when a trading halt ends. Rule 15c2–11 under the Act[14] and NASD Rule 6740 require a broker-dealer to review information about the issuer and have a reasonable basis under the circumstances to believe that the information on the issuer is accurate in all material respects and the sources of such information are reliable unless an exception to Rule 15c2–11 is available. If a trading or quotation halt is in effect for more than four consecutive business days, the ''piggyback'' exception of Rule 15c2–11(f)(3)[15] would not be available. As a result, broker-dealers would be required to comply with the requirements of Rule 15c2–11 and NASD Rule 6740 before resuming publication of quotations for the subject security.

NASD believes that the proposed amendments will further the goal of investor protection in this sector of the marketplace and enhance the quality of the OTC market. NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,[16] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, as amended, will further investor protection and the operation of a fair and orderly market by expanding NASD's current authority to halt trading and quotation in OTCBB securities to (1) all OTC Equity Securities and (2) extraordinary events that have the potential to cause major market disruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[11] 15 U.S.C. 78*l*(k).

[12] The UPC Committee is a standing committee of NASD, currently consisting of six professionals in the securities industry. The UPC Committee has authority to advise NASD on issues of interest and concern to the securities industry, including specifically interpretations with respect to the UPC. NASD staff may present matters relating to possible trading halts to the UPC Committee from time to time. However, the role of the UPC Committee in this regard is advisory only. NASD staff will retain full power and authority to make all determinations under proposed NASD Rule 6660 and IM–6660–1.

[13] *See* SEC Order of Suspension of Trading, In the Matter of Gluv Corporation (File No. 500–1; May 27, 2005). *See also* NASD Notice to Members 05–41 (June 2005).

[14] 17 CFR 240.15c2–11.

[15] 17 CFR 240.15c2–11(f)(3).

[16] 15 U.S.C. 78*o*–3(b)(6).

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–039 and should be submitted on or before June 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8810 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53924; File No. SR–NYSE–2006–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 476

June 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing to amend NYSE Rule 476 in order to make technical changes to the text of the second paragraph of NYSE Rule 476(k).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 27, 2006, the Exchange filed SR–NYSE–2006–23 [5] (''NYSE–2006–23'') with the Commission to reconcile recent amendments to the text of NYSE Rules 475 and 476.[6] NYSE–2006–23 deleted inadvertently inserted text from previously approved changes made to NYSE Rule 476(l) [7] and incorporated the corrected paragraph of NYSE Rule 476(l) [8] into NYSE Rule 476(k). Further, NYSE–2006–23 made technical changes to the rules and rendered the rules gender neutral.

However, in NYSE–2006–23, the Exchange failed to remove superfluous text in the second paragraph of NYSE Rule 476(k). Currently the paragraph reads:

> Any member, member organization or allied of a member organization who shall not pay a fine, or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported by the Exchange Treasurer to the Chairman of the Exchange Board of Directors and, after written notice mailed to such member, member organization or allied member of such arrearages, may be suspended by the Exchange Board of Directors until payment is made.

The Exchange seeks to delete the words ''of a'' after the first reference to ''allied'' in the paragraph and the word ''organization'' that follows the third reference to the word ''member'' so that the phrase reads ''* * * allied member who shall not * * *.'' The class of membership governed by this rule is an allied member and the Exchange seeks this amendment in order accurately reflect that class of membership.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of

[5] *See* Securities Exchange Act Release No. 53575 (March 30, 2006), 71 FR 17537 (April 6, 2006) (SR–NYSE–2006–23). NYSE–2006–23 became effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

[6] *See* Securities Exchange Act Release Nos. 53124 (January 13, 2006), 71 FR 3595 (January 23, 2006) (SR–NYSE–2005–37) (which became operative on April 1, 2006), and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77). Telephone conversation between Deanna Logan, Director, NYSE, and Jan Woo, Attorney, Division of Market Regulation, Commission, on May 25, 2006.

[7] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77).

[8] *Id.*

the Act [9] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which securities are allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 5-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission notes that such waiver would allow the Exchange to implement the proposed rule change immediately and thus to avoid any potential confusion in the class of membership governed by the rule. Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2006–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–40 and should be submitted on or before June 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8800 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 7 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53912; File No. SR–NYSE–2006–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange LLC Amending the Listed Company Manual To Mandate Listed Companies Become Eligible To Participate in a Direct Registration System

May 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 6, 2006, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its Listed Company Manual (''Manual'') to mandate that all listed companies become eligible to participate in a Direct Registration System (''DRS'') administered by a clearing agency registered under Section 17A of the Act.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to amend its Manual to mandate that all listed companies become eligible to participate in DRS administered by a clearing agency registered under Section 17A of the Act.

A DRS is a system that allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position in eligible securities on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer.[3] DRS, therefore, allows an investor to have eligible securities registered in her name without having a certificate issued to her and to electronically transfer, thereby eliminating the risk and delays associated with the use of certificates, her securities to her broker-dealer in order to effect a transaction. In 1996 the NYSE amended its rules to permit companies to participate in DRS although such participation was voluntary.[4] Approximately 649 issuers listed on the NYSE currently participate in DRS.

In 2004, the Commission issued a concept release, Securities Transaction Settlement, discussing whether self-regulatory organizations (''SROs'') that list securities should adopt rules to require issuers to participate in DRS.[5] Subsequently, representations of the NYSE, the NASDAQ Stock Market, the American Stock Exchange, DTC, and the Securities Industry Association entered into discussions that resulted in the decision to propose a common approach that would require listed companies to become eligible to participate in DRS but would not require listed companies to participate in DRS.[6] There is an expectation that requiring listed companies to be eligible to participate in DRS will accelerate the trend already evident among companies to participate in DRS.

Under the proposed rule change, NYSE will impose its DRS eligibility requirement pursuant to proposed new Section 501.00 of the Manual.[7] Proposed Section 501.00 does not specifically require that securities must be eligible for the DRS. Rather it requires listed companies' securities to be eligible for a direct registration system operated by a clearing agency, as defined in Section 3(a)(23) of the Act,[8] that is registered with the Commission pursuant to Section 17A(b)(2) of the Act. Therefore, while the DRS currently operated by DTC is currently the only DRS facility meeting the definition, Section 501.00 will provide issuers with the option of using another qualified DRS if one should exist in the future.

In order to make a security DRS-eligible, as currently operated by DTC, the issuer must have a transfer agent which is a DTC DRS Limited Participant.[9] NYSE understands that the larger transfer agents serving NYSE's listed company community are already eligible to participate in DRS. However, taking into account all the diverse issuers and transfer agents involved across all the markets that will be proposing similar rules regarding DRS eligibility, some transfer agents may need to take steps to become eligible to participate in DRS, and some issuers may wish to change their transfer agent in connection with this process. In addition, NYSE has been notified that some issuers may need to amend their certificate of incorporation or by-laws to become DRS eligible.

To allow sufficient time for any such necessary actions, NYSE proposes to impose the DRS eligibility requirement in two steps. Companies listing for the first time should have greater flexibility to conform to the eligibility requirements; therefore, proposed Section 501.00 would require all securities initially listing on NYSE on or after January 1, 2007, to be eligible for DRS at the time of listing. This provision does not extend to securities of companies (i) Which already have securities listed on the NYSE, (ii) which immediately prior to such listing had securities listed on another registered securities exchange in the U.S., or (iii) which are specifically permitted under NYSE's rules to be and which are book-entry only.[10] On and after January 1, 2008, all securities listed on the NYSE will be required to be eligible for DRS, again excepting those securities which are specifically permitted under NYSE rules to be and which are book-entry only.

NYSE also proposes to amend Section 601.01 of the Manual (''Exchange Approval of Transfer Agents and Registrars'') to require that any issuer required to make a listed security eligible for DRS pursuant to proposed Section 501.00 must maintain a transfer agent for that security which is eligible either for DRS operated by DTC or by another registered clearing agency. In addition, the NYSE proposes to amend the transfer agent agreements in Section 906 of the Manual to require transfer agents for securities subject to proposed Section 501.00 to agree that they will at all times be eligible either for the DRS operated by DTC or by another registered clearing agency.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

[2] The Commission has modified portions of the text of the summaries prepared by the NYSE.

[3] Currently, the only registered clearing agency operating a DRS is the Depository Trust Company (''DTC''). For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[4] Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29].

[5] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04].

[6] NASDAQ Stock Market LLC and the American Stock Exchange LLC have also filed proposed rule changes with the Commission that would require certain listed companies securities DRS eligible. Securities Exchange Act Release Nos. 53913 (May 31, 2006) [File No. SR–NASDAQ–2006–008] and 53911 (May 31, 2006) [File No. SR–Amex–2006–40]. NYSE expects that NYSE Arca will submit a similar rule filing in the near future.

[7] The exact text of the NYSE prepared rule change is set forth in its filing which can be found at *http://www.nyse.com/RegulationFrameset.*

[8] 15 U.S.C. 78a.

[9] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[10] Securities which the NYSE permits to be book-entry-only include all debt securities, securities issued pursuant to Section 703.19 of the Manual, and nonconvertible preferred stock.

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11] NYSE believes that the proposed amendments to Sections 501.00, 601.01, and 906 of the Manual are consistent with its obligations under Section 6(b)(5) because issuers will be encouraged to use DRS, which should facilitate reducing the use of securities certificates and in turn should promote more efficient clearing and settling of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–29 in the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE and on the NYSE's Web site, *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–29 and should be submitted on or before June 28, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–8816 Filed 6–6–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Fresno Yosemite International Airport (FAT) under the provisions of 40 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150 by city of Fresco, California. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for FAT were in compliance with applicable requirements, effective July 6, 2005 (70 FR 50437–50438). The proposed noise compatibility program will be approved or disapproved on or before November 22, 2006.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is May 26, 2006. The public comment period ends July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, Federal Aviation Administration, Western Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, CA 94010, Telephone (650) 876–2778 extension 613. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for FAT, which will be approved or disapproved on or before November 22, 2006. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for FAT, effective on May 26, 2006. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section

47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 22, 2006.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Western-Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, California 94010.

City of Fresno, Mr. Kevin Meikle, Airport Planning Manager, 4995 East Clinton Way, Fresno, CA 93727–1525.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on May 26, 2006.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 06–5158 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Henderson and Buncombe Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advice the public that an Environmental Impact Statement (EIS) will be prepared for a multi-land widening of I–26 between NC 225 and I–40 in Asheville in Buncombe and Henderson Counties, North Carolina (TIP Projects I–4400 & I–4700).

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, PE, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, Telephone: (919) 856–4350, extension 133 or Joseph S. Qubain, Project Manager, North Carolina Department of Transportation (NCDOT), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548, Telephone: (919) 733–7844, extension 209.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NCDOT, will prepare an EIS on a proposal to widen I–26 between NC 255 south of Hendersonville and I–40 near Asheville in Buncombe and Henderson Counties, North Carolina. The proposed project would be approximately 22.2 miles in length.

Improvements to the corridor are considered necessary to relieve forecasted congestion along the I–26 corridor. Alternatives under consideration include: (1) Taking no action; (2) Transportation Systems Management/Travel Demand Management (TSM/TDM) that incorporates operational improvements and demand mitigation programs and initiatives to meet the transportation demand within the I–26 corridor; and (3) a multi-lane widening of I–26 within the existing right-of-way that includes rehabilitation and widening of existing bridge structures within the project limits, including the Blue Ridge Parkway structure over I–26. The EIS will also include a regional cumulative impact study for the I–26 corridor.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action, the EIS and the cumulative impact study should be directed to the FHWA at the address provided above.

Issued on: June 1, 2006.

Thomas D. Riggsbee,

Area Engineer, Raleigh, North Carolina.

[FR Doc. 06–5201 Filed 6–5–06; 9:14 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2006 (71 FR 16412).

DATES: Comments must be submitted on or before July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Mr. Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6097). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 31, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB

approval. 71 FR 16412. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden. The proposed requirements are being submitted for clearance by OMB as required by the PRA.

Title: FRA Emergency Order No. 24.

OMB Control Number: 2130–0568.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The collection of information is due to a recent rash of railroad accidents caused by human failure to properly set hand-operated main track switches in non-signaled territory. FRA has determined that public safety compels the issuance of Emergency Order No. 24 and necessitates this collection of information in order that railroads modify their operating rules and take certain other actions necessary to ensure that their employees who operate hand-operated main track switches in non-signaled territory restore the switches to their proper (normal) position after use. The Emergency Order is intended to reduce the risk of serious injury or death both to railroad employees and the general public.

Annual Estimated Burden Hours: 11,078 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on May 31, 2006.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–8785 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2]
[Notice No. 17]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts—Rescission of Temporary Nighttime Operating Protocols.

SUMMARY: In 1998, FRA issued an Order of Particular Applicability (Order) requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut, and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). In 2002, CSXT Transportation (CSXT) requested, and FRA granted, permission to run its nighttime operations under temporary operating protocols until further notice. In March 2006, both CSXT and the National Railroad Passenger Corporation (Amtrak) requested that FRA rescind the 2002 CSXT nighttime operating protocols because advancements in the ACSES system had made them unnecessary. On May 1, 2006, FRA notified CSXT and Amtrak by letter that it had agreed to rescind the CSXT nighttime protocols as requested. This amendment conforms the Order accordingly.

DATES: The amendments to the Order are effective June 7, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258) or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Order, as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by Amtrak on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. FRA has subsequently amended the Order nine times to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; 67 FR 6753, February 12, 2002; 67 FR 14769, March 22, 2002; 67 FR 47884, July 22, 2002; and 69 FR 12733, March 17, 2004.

The tenth amendment to this Order is effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendment to this Order is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

Rescission of Temporary Nighttime Operating Protocols

In 2002, CSXT requested that FRA extend a June 2001 exception that allowed it to run under modified temporary operating protocols until field testing of Amtrak software on freight operations had been completed. FRA agreed to this request, and on July 22, 2002, published Notice No. 15 (67 FR 47884), which amended the Order by allowing CSXT to operate trains along the NEC—North End between the hours of 12 a.m. to 5 a.m. with ACSES cut out, without prior notification to the Amtrak dispatcher, to reduce the number of penalty brake applications experienced during switching operations.

In a series of joint meetings, Amtrak, CSXT, and FRA agreed that upgrades to the ACSES system's wayside and on-board hardware and software components had improved their reliability to the point where CSXT could now safely operate on the NEC—North End with its on-board ACSES apparatus cut in and without unexpected penalty brake applications. On May 1, 2006, FRA notified CSXT and Amtrak by letter that it had granted their requests to rescind the 2002 CSXT temporary nighttime operating protocols. The amendment to this Order rescinds those protocols only; the positive stop requirement providing entrance to track 4 at Attleboro remains in place.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Subparagraph (a)(1) of paragraph 13 is removed and reserved.

Issued in Washington, DC, on June 2, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. E6–8859 Filed 6–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34876]

BNSF Railway Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) has agreed to grant temporary trackage rights to BNSF Railway Company (BNSF) between milepost S241.9, at C.A. Junction, MO, and milepost S250.6, at Maxwell, MO, NSR's Kansas City District, a distance of 8.7 miles.

The transaction was scheduled to be consummated on May 28, 2006. The temporary trackage rights were to expire on May 30, 2006.

The purpose of this transaction is for bridging BNSF's train service while the BNSF main lines are out of service.

As a condition to this exemption, any employees affected by the acquisition of temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of these temporary trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34876, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Sidney L. Strickland Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–8849 Filed 6–6–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner or person entitled to payment or reissue of United States Savings Bonds/Notes deposited in safekeeping when original custody receipts are not available.

DATES: Written comments should be received on or before August 7, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request by Owner or Person Entitled to Payment or Reissue of United States Savings Bonds/Notes Deposited in Safekeeping When Original Custody Receipts Are Not Available.

OMB Number: 1535–0063.

Form Number: PD F 4239.

Abstract: The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

Current Actions: None.

Type of Review: Extension

Affected Public: Individuals.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 34.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 1, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–8820 Filed 6–6–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Identity.

DATES: Written comments should be received on or before August 7, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Identity.

OMB Number: 1535–0048.

Form Numbers: PD F 0385.

Abstract: The information is requested to establish the identity of the owner of United States Savings Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 50.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 1, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–8821 Filed 6–6–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit by individual surety.

DATES: Written comments should be received on or before August 7, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Affidavit By Individual Surety.

OMB Number: 1535–0100.

Form Number: PD F 4094.

Abstract: The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 460.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 1, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–8822 Filed 6–6–06; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,
June 7, 2006

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060511126–6126–01; I.D. 050306E]

RIN 0648–AT71

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action would implement statutory provisions for the Central Gulf of Alaska Rockfish Pilot Program (hereinafter referred to as the Program). This proposed action is necessary to increase resource conservation and improve economic efficiency for harvesters and processors who participate in the fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

DATES: Comments must be received no later than July 24, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: *0648–AT71–CGRockfish@noaa.gov.* Include in the subject line of the e-mail the following document identifier: Central Gulf Rockfish RIN 0648–AT71. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Web form at the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions at that site for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of Amendment 68 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages Gulf of Alaska (GOA) groundfish fisheries through the authority of the Magnuson-Stevens Act. Congress granted NMFS specific statutory authority to manage Central GOA rockfish fisheries in Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199; Section 802). In Section 802, Congress required the North Pacific Fishery Management (Council) to establish the Program with specific provisions. The Program was developed and recommended by the Council to meet the requirements of Section 802, which states:

> SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with Pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The Council adopted the proposed Program on June 6, 2005. This proposed action would meet the requirements of Section 802 by considering harvesting activities from 1996 until 2002 and historic processing activities from 1996 until 2000. The Program would recognize the historic participation of fishing vessels by allowing harvesters delivering onshore to form cooperatives and to receive an exclusive annual harvest privilege for those cooperatives. The Program would recognize the historic participation of processors by requiring cooperatives to form in association with a processor, effectively recognizing processors with processing activities during the historic period established in Section 802.

NOAA General Counsel reviewed Section 802 and in a February 3, 2005 legal opinion to the Council concluded that:

> (1) Section 802 requires the Secretary of Commerce (Secretary) and the Council to recognize the historic participation of fishing vessels and fish processors for specific time periods, geographical areas, and rockfish species when establishing the [Program]; and (2) Section 802 does not authorize recognition of the historic participation of fishing vessels or processors in years other than those specified in Section 802. Further, Section 802 defines the range of years, but does not specify that a processor must have actually processed in each of those years in order to be eligible to participate in the [Program].

The opinion by NOAA General Counsel noted further that:

> Section 802 authorizes the Council and Secretary to develop a program that would establish ''[American Fisheries Act(AFA)]-style'' cooperatives or a program that would establish limited entry licenses for processors in the CGOA rockfish fishery. However, Section 802 does not authorize the establishment of processor shares since they are prohibited under Section 802 of the [Consolidated Appropriations Act of 2004]. The legislative history supports the position that the Council is authorized to consider a broad range of ''appropriate'' management schemes, including ''AFA-style'' cooperatives, which are specifically mentioned in the legislative history. * * *

The Council considered the Congressional guidance in the development of the Program, particularly in the selection of specific years on which to base participation, and for the ''recognition'' of processor participation. While NMFS does not have specific authority under the Magnuson-Stevens Act to directly regulate on-shore processing activities, Section 802 requires NMFS to regulate on-shore processors under this Program.

Concurrent with the enactment of Pub. L. 108–199, Section 802, in 2004, industry representatives for harvesters and processors developed proposed elements for the Program and vetted those alternatives, elements, and options and submitted them to the Council for consideration. The Council and NMFS prepared analytical documents (EA/RIR/IRFA) for the

Program that reviewed alternative methods to improve the economic efficiency in the Central GOA fisheries. These included: Status quo management under the License Limitation Program (LLP); the formation of harvester cooperatives that would receive an exclusive annual harvest privilege that did not require linkage with a specific processor but that established a limited number of eligible processors; and the preferred alternative, which would permit the formation of harvester cooperatives that must be formed in association with a qualified processor, and that would receive an exclusive annual harvest privilege.

Currently, rockfish fisheries, and many other groundfish fisheries, are managed under the LLP. The LLP requires harvesters to possess an LLP license to participate in GOA fisheries, but does not provide specific exclusive harvest privileges to LLP holders. Harvesters with LLP licenses compete with each other for the total allowable catch (TAC) assigned to the fishery. This competition creates economic inefficiencies. Harvesters increase the fishing capacity of their vessels to outcompete other vessels. This results in an accelerated rate of fishing as fishermen race to harvest more fish than their competitors. Similarly, processors increase their processing capacity to outcompete other processors. These incentives to increase harvesting and processing capacity reduce the ability of harvesters and processors to extract additional value from the fishery products because the TAC is harvested and processed quickly. This rapid pace provides few opportunities to focus on quality or produce product forms that require additional time but yield greater value.

Central GOA Rockfish Pilot Program Overview

The Program was developed by trawl industry representatives, primarily from Kodiak, Alaska, in conjunction with catcher/processor representatives. They sought to improve the economic efficiency of the Central GOA rockfish fisheries by developing a program that would establish cooperatives that would receive exclusive harvest privileges. These rockfish fisheries are almost exclusively harvested by trawl vessels in Federal waters.

This proposed rule would implement the Program as developed by the Council. The Program would be authorized for two years, from January 1, 2007, until December 31, 2008. The Program would provide exclusive harvesting and processing privileges for a specific set of rockfish species and for associated species harvested incidentally to those rockfish in the Central GOA—an area from 147° W. long. to 159° W. long.

The rockfish species for which exclusive harvesting and processing privileges would be allocated under the Program are the primary rockfish species. The primary rockfish species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. The species incidentally harvested by vessels during rockfish fisheries in the Central GOA are the secondary species. The secondary species managed under this Program for which an exclusive harvesting and processing privilege would be allocated include: Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish.

The Program would also allocate a portion of the total GOA halibut mortality limit to participants based on historic halibut mortality rates in the primary rockfish species fisheries. Halibut caught by trawl gear is considered to be a prohibited species catch (PSC) and may not be retained or sold under regulations established under the authority of the Northern Pacific Halibut Act of 1982. However, the Program would provide participants a fixed amount of incidental halibut mortality for use through an allocation of halibut bycatch, specifically an allocation of the halibut mortality limit. Halibut is incidentally caught and killed in a number of the primary rockfish species and secondary species fisheries. The Program would account for this halibut mortality by providing a portion of the GOA halibut mortality limit to Program participants. To maintain consistency with terms currently used by NMFS and the fishing industry, this halibut mortality limit would be called a halibut PSC limit.

The Program would allocate harvest privileges to holders of LLP licenses with a history of Central GOA rockfish landings associated with those licenses. The allocation of legal landings to an LLP license would allow the holder of that LLP license to participate in the Program and receive an exclusive harvest privilege under certain conditions. Specifically, the Program would:

1. Assign quota share (QS) for primary rockfish species to an LLP license with a trawl gear designation in the Central GOA. The Program would assign QS to an LLP license based on the legal landings of primary rockfish species associated with that LLP license. A person could receive this QS if the LLP license had a history of primary rockfish species landings during a specific time period associated with the license and the person holding the LLP license met other eligibility requirements. Once QS was assigned to a specific LLP license it could not be divided or transferred separately from that LLP license. On an annual basis, a LLP holder would assign the LLP license and QS assigned to that LLP license for use in a rockfish cooperative, limited access fishery, or opt-out fishery.

2. Establish eligibility criteria for processors to have an exclusive privilege to receive and process primary rockfish species and secondary species allocated to harvesters in this Program.

3. Allow a person holding a LLP license with QS to form a rockfish cooperative with other persons (*i.e.*, harvesters) on an annual basis. Rockfish cooperatives would receive an annual cooperative fishing quota (CFQ), which would be a dedicated amount of primary rockfish species and secondary species that the rockfish cooperative could harvest in a given year. Rockfish cooperatives also would receive an annual CFQ that would be a limit on the amount of halibut PSC the cooperative could use while prosecuting its primary rockfish species and secondary species CFQ. The amount of CFQ assigned to a cooperative would be based on the sum of the QS held by all the harvesters participating in the rockfish cooperative. A rockfish cooperative could form only under specific conditions. A person holding a LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP) could form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding a LLP license that allows them only to deliver their catch onshore (catcher vessel LLP) could only form a rockfish cooperative with other persons holding catcher vessel LLP licenses and only in association with the processor to whom those persons have historically delivered most of their catch.

4. Allow rockfish cooperatives to transfer all or part of their CFQ to other rockfish cooperatives, with some restrictions.

5. Provide an opportunity for a person not in a rockfish cooperative, but who holds an LLP license with QS, to fish in a limited access fishery. NMFS would not allocate a specific amount of fish to a specific harvester in the limited access fishery. All harvesters in the limited access fishery would compete with all other such harvesters to catch the TAC assigned to the limited access fishery. The TAC assigned to the limited access fishery would represent the total amount of fish assigned to all the

persons with LLP licenses designated for the limited access fishery.

6. Establish a small entry level fishery for Central GOA rockfish for harvesters and processors not eligible to receive QS under this Program.

7. Allow holders of catcher/processor LLP licenses to opt-out of the Program, with certain limitations.

8. Limit the ability of processors to process catch outside the communities in which they have traditionally processed primary rockfish species and associated secondary species.

9. Establish catch limits, commonly called ''sideboards,'' to limit the ability of participants eligible for this Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Program would provide certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, adversely affecting the participants in other fisheries. Sideboards would limit the total amount of catch in other groundfish fisheries that could be taken by eligible harvesters to historic levels. Sideboards would limit harvests made in the state parallel groundfish fisheries, which are fisheries opened by the State of Alaska in state waters concurrent with the Federal season to allow the prosecution of the TAC. Sideboards would limit harvest in specific rockfish fisheries and the amount of halibut bycatch that could be used in certain flatfish fisheries. General sideboards would apply to all vessels and LLP licenses with legal landings associated with that vessel or LLP license that could be used to generate QS. Additionally, specific sideboards would apply to certain catcher/processor and catcher vessels and LLP licenses.

10. Create a monitoring and enforcement mechanism to ensure that harvesters maintain catches within their annual allocations and would not exceed sideboard limits.

The Program would provide greater security to harvesters in rockfish cooperatives by creating an exclusive harvest privilege. Although participants in the limited access fishery, opt-out fishery, and entry level fishery would not receive a guaranteed catch allocation, most harvesters would be likely to participate in a rockfish cooperative that receives CFQ. The Program likely would result in a slower-paced fishery and could provide the ability for the harvester to choose when to fish and therefore avoid poor weather. The Program likely would provide greater stability for processors by spreading out production over a greater period of time. These changes would increase the focus on product quality in all sectors.

Cost Recovery and Fee Collection Provisions

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to ''collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program [or] community development quota program.'' Any individual fishing quota (IFQ) program, must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to the Program. If subsequent review of the Magnuson-Stevens Act and the Program indicate that a fee collection provision is required, NMFS would implement any required provision in a subsequent regulatory amendment to the Program.

Specific Components of the Program

Quota Share Allocation and Eligibility

The Program would establish eligibility criteria for harvesters and processors. Only harvesters that are eligible for the Program could receive an exclusive harvest privilege through the formation of a rockfish cooperative. Eligible harvesters would also be allowed to fish in a limited access fishery if they chose not to join a cooperative. Eligible harvesters with LLP licenses designated for the catcher/processor sector could choose to opt-out of most of the aspects of the Program. Processor eligibility would be established based on processors meeting minimum processing requirements during a specific historic period. Processors that are eligible for the Program could form exclusive associations with harvester cooperatives that are formed by eligible harvesters holding LLP licenses designated for the catcher vessel sector. The eligible processors would be authorized to process the fish harvested in the limited access fishery by harvesters not in cooperatives.

Quota Share

Quota share is the term used to describe the multi-year privilege to be eligible to receive exclusive harvest privileges under the Program. Although the Council did not use the specific term ''quota share'' when describing the ability to receive a harvest privilege under this Program, the Council used the terms ''LLP historic shares,'' ''CV historic shares,'' ''CP historic shares,'' and ''harvest shares'' to describe the harvest privilege that is linked to historic harvests attributed to an LLP license. Rather than create a new term to explain an established concept, NMFS would use the term ''quota share'' to describe a harvest privilege based on historic harvest activities. The use of the term ''quota share'' does not alter the original intent of the Council.

Quota share would be an attribute of the LLP license. Once NMFS calculated how much QS would be allocated to an LLP license, NMFS would modify that LLP license and designate that amount on the license. Quota share assigned to an LLP license could not be transferred independent from that LLP license. QS assigned to a LLP license would not confer a guaranteed harvest to the holder of that QS. QS would provide a harvest privilege, not a right, to its holder.

Quota share would be the basis for the annual calculation of the amount of fish that may be harvested or used if that QS were assigned to a rockfish cooperative. Once QS was assigned to an LLP license, it would authorize that LLP holder to participate in the Program with that LLP license. If an eligible harvester assigned that LLP license, and its associated QS, to a cooperative with other eligible harvesters, the sum of the QS of all of the eligible harvesters would yield an exclusive annual catch limit of rockfish species, secondary species, and halibut PSC that could be harvested by the members of the rockfish cooperative. Cooperatives would be formed by eligible harvesters holding LLP licenses in the same sector, either the catcher/processor sector or the catcher vessel sector.

If an eligible harvester assigned a LLP license with QS to the limited access fishery, that harvester could compete with other eligible harvesters for a portion of the TAC assigned to all participants in the limited access fishery, but would not receive a guaranteed harvest amount based on the QS on that LLP license. One limited access fishery would be established for catcher/processor sector, another for the catcher vessel sector.

If an eligible harvester assigned an LLP license with QS to the opt-out fishery, that QS would not yield any guaranteed amount and that LLP license could not be used in a rockfish cooperative or limited access fishery. Only eligible harvesters holding LLP licenses designated for the catcher/processor sector could choose to participate in the opt-out fishery.

Eligibility for harvesters. The Program would allocate QS to LLP license holders based on the catch history associated with the LLP licenses held by that person at the time of application. Eligibility to receive QS would be based on the history of legal landings of primary rockfish species in the Central GOA associated with an LLP license.

A person would be eligible to receive QS under this Program if: (1) That person held the LLP license at the time of application; (2) a vessel made landings of primary rockfish species attributed to that LLP license during a specific time period; (3) those landings were legal landings; and (4) that person submitted a timely application that is subsequently approved by NMFS.

A holder of an LLP license would be required to hold a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl designation at the time of application to participate in the Program. Although the Council motion notes that an interim LLP license would be considered as eligible for QS under this Program, NMFS has resolved all claims for interim LLP licenses that are endorsed for Central GOA groundfish with a trawl designation. Therefore, interim LLP licenses would not be considered eligible LLP licenses for this Program.

NMFS would assign QS to a LLP license if legal landings were attributed to that LLP license, or made under the authority of that LLP license for any of the primary rockfish species during the directed fishing seasons during the time period established in Table 1. The LLP was effective on January 1, 2000 (63 FR 52642). Some of the primary rockfish species landings that could result in QS could have been made on a vessel before the LLP was effective, and LLP licenses had been issued; this would include any landings made between 1996 and 1999. Any primary rockfish species landings made on a vessel between 1996 and 1999 would be attributed to the LLP license that was originally issued in 2000 based on the activities of that vessel. Some landings that would result in QS could have been made after the effective date of the LLP and under the authority of an LLP license; this would include landings made between 2000 and 2002. This Program would include legal landings made before and after the effective date of the LLP.

NMFS did not track the use of an LLP license on a specific vessel during the 2000 and 2001 calendar years. NMFS would attribute legal landings for 2000 to 2001 to an LLP license based on the presumption that the LLP license was used aboard the same vessel to which that LLP license was originally issued in 2000. An applicant to receive QS would be required to submit documentation establishing otherwise. This written documentation would have to be submitted to NMFS for review during the application process.

Multiple LLP licenses can be used on a vessel. Therefore, landings made on a vessel could have been assigned to more than one LLP license. If more than one person claims the same landing to be assigned to more than one LLP license, then each LLP license would be assigned an equal share of the QS resulting from that landing. NMFS would award the QS resulting from a landing in another manner, only if the applicants could provide written documentation of an agreement establishing an alternative means for distributing the QS. This written documentation would have to be provided to NMFS for review during the application process. NMFS anticipates very few landings would be claimed by more than one person for more than one LLP license based on experience with previous rationalization programs.

A legal landing would include fish caught, retained, and reported in compliance with state and Federal regulations in effect at the time of landing. Specifically, the definition of a legal landing would be further defined for catcher vessels and catcher/processor vessels as follows:

For catcher vessels, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that was offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for the primary rockfish fisheries, and an amount of halibut mortality that was attributed to that catcher vessel sector during the directed fishing season for the primary rockfish fisheries as shown in Table 1.

For catcher/processors, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that is recorded on a NMFS weekly production reports (WPRs) during the directed fishing season for the primary rockfish fisheries, and an amount of halibut mortality attributed to the catcher/processor sector during the directed fishing season for the primary rockfish fisheries as shown in Table 1.

The directed fishing season dates that would be used to establish a legal landing for each of the primary species are presented in Table 1:

TABLE 1.—DATES EACH YEAR FOR LEGAL LANDINGS OF PRIMARY SPECIES FISHERIES UNDER THE PROGRAM

A legal rockfish landing includes	Year						
	1996	1997	1998	1999	2000	2001	2002
Northern rockfish that were harvested between;	July 1–July 20	July 1–July 10	July 1–July 14	July 1–July 19 and Aug. 6–Aug. 10.	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by	July 27	July 17	July 21	July 26 and Aug. 16, respectively.	August 2	July 30 and Oct. 28, respectively.	Aug. 2.
Pelagic shelf rockfish that were harvested between;	July 1–Aug. 7 and Oct. 1–Dec. 2.	July 1–July 20	July 1–July 19	July 1–Sept. 3	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by	Aug. 14 and Dec. 9, respectively.	July 27	July 26	Sept. 10	Aug. 2	July 30 and Oct. 28, respectively.	July 28.
Pacific ocean perch that were harvested between;	July 1–July 11	July 1–July 7	July 1–July 6 and July 12–July 14.	July 1–July 11 and Aug. 6–Aug. 8.	July 4–July 15	July 1–July 12	June 30–July 8.
and landed by	July 18	July 14	July 13 and July 21, respectively.	July 18 and Aug. 15, respectively.	July 22	July 19	July 15.

As shown in Table 1, NMFS would consider legal landings for QS if the harvests were made during the season opening and the landings were reported within seven days after the end of the directed fishing season. This seven day

extension would accommodate harvesters that caught rockfish during the directed fishing season, but were not able to deliver that catch until after the season ended. Several days may be required for a harvesting vessel to reach processing facilities after the end of a season, and the seven day extension would accommodate those harvesters. Additionally, this seven day period would accommodate catcher/processors that submitted WPRs in a timely manner. Because the WPR is required on a weekly basis, the season could have ended before the WPR submission deadline had been reached. A seven day period after the end of the directed fishing season to report landings would accommodate catcher/processors submitting WPRs.

A timely application would include a complete application to participate in the Program is that is received by NMFS not later than 5 p.m. on December 1, 2006, or postmarked by that date. The application process and specific components required in the application are detailed under *Application and Appeal Process* below.

NMFS would consider an eligible rockfish harvester as any person who holds an LLP license with QS. The LLP license holder may have obtained the QS by submitting an approved application to participate in the Program, or received the LLP license with QS through a NMFS-approved transfer. The procedures for receiving an LLP license through by transfer are described in regulations at 50 CFR 679.4(k)(7).

Eligibility for Processors

The Program would require that processors meet certain eligibility requirements to receive any primary or secondary species fish harvested by a rockfish cooperative, or in a limited access fishery. Processors that do not meet these eligibility requirements could receive only primary rockfish harvested from the Central GOA under the entry level fishery. Processor eligibility would not guarantee a processor a specific quantity of fish for delivery. It would give processors the ability to associate with a rockfish cooperative with catcher vessel harvesters or to compete with other eligible processors to receive fish harvested in the limited access fishery.

Eligibility to participate as a processor in the Program would be limited to those persons who: (1) Hold the processing history of a processing facility; (2) meet a minimum amount of annual primary rockfish processing; and (3) submit a timely application approved by NMFS. Persons who meet this requirement would be an eligible rockfish processor and would be authorized to receive and process fish harvested under the Program. Once a person is an eligible processor, that person may transfer this privilege, subject to approval by NMFS.

A person would hold the processing history of a shoreside processor or stationary floating processor if he or she owned the processing facility at the time of application to participate in the Program, or if that person held the processing history from an otherwise qualified processing facility under the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person. A copy of this contract would need to be submitted to NMFS for review with the application.

The effect of this provision is that a person could hold processing history that was earned during the qualifying years even if that person does not own the processing facility where those rockfish were processed. This provision would address a concern raised by the public during the development of the Program. At least one processing facility that actively processed primary rockfish species during the qualifying years, and could be eligible under the Program is no longer active. The processing history from that processing facility was sold to another processing entity. Allowing a person to hold processing history without owning the facility at which that processing history was earned would allow the holder of the processing history to continue to receive primary rockfish species and secondary species under the Program and be eligible to associate with harvesters in a rockfish cooperative.

To become an eligible processor, the holder of processing history must hold processing history from a shoreside processor or stationary floating processor entity that received not less than 250 metric tons in round weight equivalent of legally landed primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the directed fishing season. The season dates are the same as those established in Table 1 for harvesters. NMFS will use State of Alaska fish tickets to determine legal landings of rockfish for processors.

If the Program is approved by the Secretary of Commerce, a timely processor application would need to be submitted and received by NMFS not later than 5 p.m. on December 1, 2006. The specific components of the application are described under *Application and Appeal Process* below.

The Official Rockfish Program Record

NMFS would determine the amount of an eligible applicant's QS, or a person's eligibility as a processor, based on a review of the Official Rockfish Program Record (Official Record). NMFS would produce the Official Record from data including State of Alaska fish tickets, NMFS WPRs, and other relevant information. NMFS would presume the Official Record is correct and an applicant would have the burden of establishing otherwise through an evidentiary appeals process. That process is described under *Application and Appeal Process* below.

Application and Appeal Process

To receive QS or processor eligibility, a potentially eligible harvester or processor must submit an application to participate in the Program that is received by NMFS by 5 p.m. on December 1, 2006, or postmarked by that date (if mailed). NMFS would facilitate the application process by making the application form available on the NMFS, Alaska Region website *http://www.fakr.noaa.gov.* Interested persons may contact NMFS to request an application package. NMFS would mail an application package to all potentially eligible LLP license holders based on the address on record at the time the application period opens. An application may be submitted by mail, fax, or hand delivery. The proposed regulatory text (see § 679.81(e)) provides addresses and delivery locations.

NMFS would require an application to participate in the Program for potentially eligible processors and harvesters. The proposed regulatory text (see § 679.81(e)) provides a detailed list of the information required for the application. Briefly, the application would contain the following elements:

1. Identification and contact information for the applicant;

2. Harvester information, including vessel identification and LLP licenses used on a vessel (harvesters only);

3. Identification of processing activities, locations, and processing history held by the applicant (processors only); and

4. Name of the community in which fish were processed (processors only). The community is either the city if the community is incorporated as a city within the State of Alaska, or the borough if the community is not in a city incorporated within the State of Alaska and the city is in a borough as incorporated within the State of Alaska;

5. The four of the five calendar years from 1996 through 2000 to establish which harvesters would be included for

consideration when establishing a rockfish cooperative in association with that processor—the processor qualifying period (processors only);

6. A copy of the contract that the legal processing history and rights to apply for and receive processor eligibility based on that legal processing history have been transferred or retained (if the processing history has been transferred);

7. Any other information deemed necessary by NMFS. NMFS may request additional information to clarify the application and determine if an applicant's LLP license is qualified to receive QS, or if an applicant is an eligible rockfish processor; and

8. The applicant's signature and certification.

NMFS would evaluate applications submitted during the specified application period and compare all claims in an application with the information in the Official Record. NMFS would accept claims in an application it determines to be consistent with information in the Official Record. NMFS would not accept inconsistent claims in the applications, unless verified by documentation. An applicant who submits inconsistent claims, or an applicant who fails to submit information supporting his or her claims with their application, would be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Official Record. An applicant who submits claims that are inconsistent with information in the Official Record would have the burden of proving that the submitted claims are correct.

NMFS would evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS were to determine that the additional information or evidence met the applicant's burden of proving that the inconsistent claims in his or her application were correct, NMFS would amend the Official Record with that information or evidence. NMFS would use this information or evidence to determine the applicant's eligibility. However, if NMFS were to determine that the additional information or evidence did not meet the applicant's burden of proof that the inconsistent claims in his or her application were correct, NMFS would deny the inconsistent claims. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to change the information in the Official Record through an initial administrative determination (IAD).

NMFS would prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS were to determine that the information or evidence provided by the applicant failed to support the applicant's claims and is insufficient to rebut the presumption that the Official Record is correct. NMFS' IAD would indicate the deficiencies and discrepancies in the application, or revised application, including any deficiencies in the information, or the evidence submitted in support of the information. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence. An applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive contested landing data until the appeal was resolved in the applicant's favor.

Once NMFS has approved an application from a person holding a valid fully transferrable LLP license with legal rockfish landings, that person would be an eligible rockfish harvester. Once NMFS has approved an application from a person with legal rockfish processing history, that person would be an eligible rockfish processor.

Quota Share Calculation Method for Primary Rockfish Species

Once NMFS has determined that a person is an eligible rockfish harvester, NMFS would specify the QS for the primary rockfish species for each LLP license held by that eligible rockfish harvester.

An eligible rockfish harvester who holds an LLP license endorsed for Central GOA groundfish fisheries with a catcher/processor trawl designation would be eligible to receive QS to participate in the catcher/processor sector. The allocation would be based on any legal landings of primary species that were harvested and processed aboard the vessel from which that LLP license was derived or used during the qualifying periods. If landings were made on a vessel that was originally issued an LLP license in 2000 with a catcher/processor designation, but the primary rockfish species legally landed by that vessel were not caught and processed onboard that vessel, NMFS would assign any QS resulting from those legal landings to the catcher vessel sector. Based on an initial review of legal landings data, NMFS does not anticipate any such allocations.

An eligible rockfish harvester who holds an LLP license endorsed for Central GOA groundfish fisheries with a trawl designation and with landings that were not processed at sea would be eligible to receive QS to participate in the catcher vessel sector. The allocation would be based on any legal landings of primary species that were harvested aboard the vessel from which that LLP license was derived or used during the qualifying periods.

QS Calculation Procedure

NMFS would calculate the QS for each of the three primary rockfish species for each fully transferable LLP license held by an eligible rockfish harvester using the following procedures.

First, NMFS would sum the legal landings of each primary rockfish species for each year from 1996 through 2002, including years with zero pounds, during the fishery seasons listed in Table 1.

Second, NMFS would sum the five years with highest poundage of legal landings for that LLP license for that primary rockfish species (referred to the highest five years for that LLP license).

Third, NMFS would divide the highest five years for that LLP license by the sum of all the pounds for all of the highest five years for all LLP licenses for that primary rockfish species. This remaining amount is the ratio of the highest five years of legal landings for that LLP license compared to the highest five years for all LLP licenses with legal landings.

Fourth, NMFS would multiply this ratio by the initial QS pool for that primary rockfish species in units. This would yield the QS that would be issued for that LLP license in QS units. The Council recommended that the sum of all the initial QS units in a fishery would equal the sum of the 2002 TAC for that fishery (expressed in pounds). Using a conversion of 2204.6 pounds per metric ton for the 2002 TACs, the initial QS pool units that would be issued for the three primary species fisheries are: Northern rockfish—9,193,182 QS units; pelagic shelf rockfish—7,672,008 QS units; Pacific ocean perch—18,121,812 QS units. In future years, the total QS units in a fishery would vary from the initial QS pool only if subsequent appeals, enforcement actions, or other operations of law were to affect the total number of QS units (*e.g.*, Congressional action).

Fifth, NMFS would determine the amount of QS units for that LLP license for a primary rockfish species that would be assigned to the catcher/processor sector. NMFS would determine the percentage of legal landings in the highest five years for

that LLP license used to calculate the QS assigned to the catcher/processor sector and would multiply the QS units for that license by this percentage. This yields the QS units that would be assigned to the catcher/processor sector for that LLP license.

Finally, NMFS would determine the amount of QS units for that LLP license for a primary rockfish species that would be assigned to the catcher vessel sector. NMFS would determine the percentage of legal landings in the highest five years for that LLP license used to calculate the QS assigned to the catcher vessel sector and multiply the QS units for that license by this percentage. This yields the QS units to that would be assigned to the catcher vessel sector for that LLP license.

The total amount of QS units assigned to the catcher vessel sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher vessel sector. The total amount of QS assigned to the catcher/processor sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher/processor sector.

If an application is denied by final agency action, then all primary rockfish species that would have been assigned to that applicant based on that LLP license would be redistributed among all other eligible rockfish harvesters in that sector in proportion to the amount of their primary species QS. Based on previous experience with other rationalization programs (*e.g.*, the Halibut and Sablefish IFQ Program and the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program), NMFS anticipates that almost all potential recipients of QS will apply.

NMFS would not issue separate QS for the secondary species or halibut PSC. Instead, NMFS would use the amount of primary rockfish species QS to determine the specific annual catch amount for those species. The Council recommended that NMFS base the annual catch limit of secondary species and halibut PSC on the historic harvests of primary rockfish species attributed to LLP licenses in that sector. NMFS would incorporate this recommendation in the annual determination of the catch limit. The methods for calculating the annual catch limit for primary rockfish species, secondary species, and halibut PSC are discussed below under TAC Calculation Methods.

Participation in a Rockfish Cooperative, Limited Access Fishery, and Opt-Out Fishery

An eligible rockfish harvester who receives QS allocation assigned to a specific LLP license would be required to assign all the QS associated with the LLP license to a specific rockfish cooperative, a limited access fishery, or the opt-out fishery. The eligible rockfish harvester could not assign portions of QS to different rockfish cooperatives, to a rockfish cooperative and the limited access fishery, or apportion the QS otherwise. Once an LLP license and its associated QS is assigned for a year, the eligible rockfish harvester could not reassign the LLP license or QS to a different fishery during that year.

Each year, an eligible rockfish harvester would be required to apply to use the LLP license and its associated QS to participate in a rockfish cooperative, in the limited access fishery, or in the opt-out fishery. Applications would be available on the NMFS website *http://www.fakr.noaa.gov*, or NMFS would mail applications to the applicant upon request. Applications would have to be submitted to NMFS by mail, fax, or hand delivery (see **ADDRESSES**). Applications would have to be submitted by December 1 each year. An eligible rockfish harvester could apply to participate in only one fishery per year with an LLP license and its associated QS. The application would be valid for one year. The contents of the specific applications are as follows:

Application for CFQ. A rockfish cooperative that submits an application that is approved by NMFS would receive a CFQ permit. The CFQ permit would contain the rockfish cooperative's CFQ of primary and secondary species and halibut PSC, based on the collective QS of the LLP licenses held by the cooperative members. The CFQ permit also would identify the members of the rockfish cooperative and the vessels authorized to harvest the CFQ. A vessel named on a CFQ permit would be considered to be actively engaged in fishing the CFQ for that rockfish cooperative fishery and would be subject to all observer, permitting, and reporting requirements applicable to vessels fishing CFQ. A rockfish cooperative would be required to submit an amended application for CFQ to add or remove a vessel eligible to fish the CFQ assigned to that cooperative. NMFS would be required to approve any amendments to the application for CFQ. NMFS' issuance of a CFQ permit to a rockfish cooperative would not be a determination that the rockfish cooperative was formed or was operating in compliance with antitrust law.

A complete application would be required to contain the following information:

1. Identification and contact information of the rockfish cooperative;

2. Names of the members of the rockfish cooperative, including information on the LLP licenses assigned to the rockfish cooperative;

3. A copy of the business license and articles of incorporation or partnership agreement signed by the members of the rockfish cooperative;

4. Terms that specify that: Processor affiliated harvesters could not participate in price setting negotiations except as permitted by general antitrust law, and that the cooperative must establish a monitoring program sufficient to ensure compliance with the Program; and

5. Applicant(s) signature and certification.

Application for the limited access fishery. In order to participate in the limited access fishery for a year, an eligible rockfish harvester would be required to submit an application for the limited access fishery. An application would include the following information:

1. Identification and contact information of the eligible rockfish harvester;

2. Information on the LLP license(s) and vessels that would be assigned to the limited access fishery; and

3. Applicant signature and certification.

Application to opt-out. In order to opt-out of the Program for a year, an eligible rockfish harvester with catcher/processor QS would be required to submit an application to opt-out. An application would include the following information:

1. Identification and contact information of the eligible rockfish harvester;

2. Information on the LLP license(s) and vessels that would be assigned to the opt-out fishery; and

3. Applicant signature and certification.

TAC and Halibut PSC Calculation Method

Annually, NMFS would determine the amount of primary species, secondary species, and halibut PSC that would be allocated to each fishery based on the total amount of QS assigned to each fishery. Table 2 describes the proposed annual allocations to a rockfish cooperative, limited access fishery, or opt-out fishery.

TABLE 2.—ANNUAL ALLOCATIONS BY FISHERY TYPE AND SPECIES

Fishery type	Primary rockfish species	Secondary species	Halibut PSC
Rockfish cooperatives	CFQ is allocated to each rockfish cooperative with an exclusive harvest privilege.		
Limited access fishery	TAC is allocated to the catcher vessel or C/P sector limited access fishery. There is no exclusive harvest privilege. Participants within the sector compete for the TAC.	No specific amount is allocated. The limited access fishery is limited by a trip-based maximum retainable amount (MRA) established in Table 3 of 50 CFR part 679.	No specific amount is allocated. Habilbut bycatch is limited by the PSC limit for that time period specified for the respective deep and shallow water complex fisheries.
Opt-out (catcher/processor sector only).	No allocation. Any amount that would have been allocated is redistributed among catcher/processor sector participants in rockfish cooperatives and the limited access fishery.	No allocation	No allocation. Halibut bycatch is limited by the PSC limit for that time period specified for the respective deep and shallow water complex fisheries.

Primary Rockfish Species

NMFS would calculate the amount of primary rockfish species TAC that would be assigned to the Program on an annual basis by first deducting the incidental catch allowance (ICA) for primary rockfish species harvests in other non-Program fisheries from the TAC for that fishery. Primary rockfish species are incidentally harvested in other fisheries (*e.g.*, trawl flatfish fisheries) and NMFS must set aside some bycatch amount for those fisheries. After accounting for this ICA, 95 percent of the remaining TAC for a primary rockfish species (TACs) would be assigned for use by rockfish cooperatives and limited access fisheries in the catcher vessel and catcher/processor sectors. Five percent of the remaining TAC would be allocated for use in the entry level fishery.

The TAC_s would be apportioned between the catcher/processor sector and the catcher vessel sector. The amount of TAC_s assigned to the catcher/processor sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher/processor sector divided by the QS pool for that primary rockfish fishery. The amount of TAC_s assigned to the catcher vessel sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher vessel sector divided by the QS pool for that primary rockfish fishery.

Determining the TAC by Fishery Type. Once NMFS determines how much TAC_s is assigned to each sector, the TAC_s for each sector would be divided between the rockfish cooperative fishery and the limited access fishery in that sector depending on the amount of QS held by each LLP license assigned to each fishery.

LLP licenses assigned to a rockfish cooperative would yield CFQ that would be based on the sum of all QS units associated with all LLP licenses assigned to the rockfish cooperative for a specific primary rockfish species. The annual CFQ issued to a cooperative would be equal to the TAC_s assigned to that primary rockfish fishery in that sector multiplied by the QS units assigned to that cooperative divided by the QS pool for that sector in that fishery.

The TAC for a limited access fishery would be based on the proportion of the QS for that primary rockfish species in that sector associated with the LLP licenses assigned to the limited access fishery. The TAC_s assigned to a limited access fishery for a sector would be equal to the primary rockfish fishery TAC_s remaining after the allocation of CFQ was made to the rockfish cooperatives in that sector. These TAC_s would be assigned to a catcher vessel limited access fishery and a catcher/processor limited access fishery.

In the catcher/processor sector, an adjustment to the CFQ assigned to rockfish cooperatives and TAC for the limited access fishery would be made to account for LLP licenses assigned to the opt-out fishery. The QS assigned to the opt-out fishery in the catcher/processor sector would not yield any TAC allocation for that QS. Instead, the TAC that would have resulted from that QS if it were assigned to a rockfish cooperative or limited access fishery would be redistributed to the rockfish cooperatives and the limited access fishery in the catcher/processor sector. This redistribution would be proportional to the relative holdings of QS held by a rockfish cooperative or limited access fishery in the catcher/processor sector.

See Table 4 for more information on the use of the CFQ by a rockfish cooperative.

Secondary Species

The proposed rule would define secondary species as species that were historically harvested during the directed rockfish fisheries. Secondary species would be allocated as an exclusive harvest privilege only to rockfish cooperatives. Rockfish cooperatives would receive CFQ for specific secondary species. Eligible rockfish harvesters in a limited access fishery, or opt-out fishery, would not be allocated exclusive harvest privileges for secondary species. Harvesters in the limited access fishery or opt-out fishery would be able to retain secondary species during the limited access fishery, or in non-Program fisheries, but would be subject to a maximum retainable amount (MRA) limit. Secondary species allocated as CFQ to rockfish cooperatives would be allocated differently between cooperatives in the catcher vessel and catcher/processor sectors. For participants in a rockfish cooperative, NMFS would issue secondary species CFQ that would be linked to the amount of QS allocated to an LLP license.

The secondary species would be treated differently in the catcher/processor and catcher vessel sectors based on the historic harvest patterns in those sectors. Historically, harvesters in both sectors have tended to retain all sablefish harvested with trawl gear and thornyhead rockfish caught in conjunction with rockfish harvests because they were high value species. Traditionally, catcher vessels retained Pacific cod during the course of their rockfish harvests; however, this was less common among catcher/processors. Consequently, the Council recommended managing Pacific cod in the catcher vessel sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed ''hard cap'' allocation of CFQ might provide. Similarly, catcher/

processors typically had markets for rougheye and shortraker rockfish and tended to retain these species in greater proportion than catcher vessels and the Council recommended an allocation of these species to catcher/processors. However, the Council recommended an MRA for shortraker and rougheye rockfish for the catcher vessel fleet that would require the discarding of all shortraker or rougheye rockfish if the aggregate shortraker/rougheye MRA limit was exceeded. The MRA percentages recommended for the catcher vessel sector for shortraker and rougheye rockfish would provide some flexibility for the harvesters in these sectors yet maintain harvests within historic levels.

Rockfish cooperative fishery. Table 3 shows the specific secondary species that would be allocated as CFQ to rockfish cooperatives in the catcher vessel sector and catcher/processor sector.

TABLE 3.—SECONDARY SPECIES ALLOCATED TO ROCKFISH COOPERATIVES IN THE CENTRAL GOA BY FISHERY SECTOR

Secondary species	Rockfish cooperatives in the catcher vessel sector	Rockfish cooperatives in the catcher/processor sector
Pacific cod	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	Not allocated. Managed under a maximum retainable amount (MRA) of 4.0% per trip.
Rougheye rockfish	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip.	Up to 30.03% of the TAC in the Central GOA is allocated as CFQ among cooperatives based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Sablefish allocated to trawl gear	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	Up to 58.87% of the TAC in the Central GOA is allocated as CFQ among cooperatives based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Shortraker rockfish	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip. A maximum of 9.72% of the shortraker TAC on an annual basis may be retained.	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Thornyhead rockfish	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.

Each calendar year, the Regional Administrator would determine the poundage of secondary species that would be assigned to the Program. NMFS would determine the maximum poundage of fish that could be harvested by the appropriate sector. The poundage of fish that could be harvested by a sector would be assigned only to rockfish cooperative(s) within that sector. The poundage of fish that could be harvested by a specific sector and assigned to a specific rockfish cooperative would be determined according to the following procedure:

First, NMFS would sum the amount of each secondary species retained by all catcher/processors and catcher vessels during the directed rockfish fisheries during all qualifying season dates. This would yield the Program catcher/processor sector harvests and catcher vessel sector harvests, respectively.

Second, NMFS would sum the amount of each secondary species retained by all catcher/processors and all catcher vessels in the Central GOA from January 1, 1996 through December 31, 2002. This would be the total harvest.

Third, for each secondary species, NMFS would divide the rockfish harvests for that sector by the total harvests and multiply by 100. This would yield the percentages of secondary species assigned to the rockfish fishery catcher/processor sector and catcher vessel sector, respectively.

Fourth, NMFS would multiply the percentage of secondary species assigned to the sector by the TAC for that secondary species. This would be the TAC allocated to that sector. This method would be the same for all secondary species, except rougheye rockfish and shortraker rockfish for the catcher/processor sector.

The TAC of rougheye rockfish allocated to the catcher/processor sector would be 58.87 percent of the TAC for the Central GOA. The TAC of shortraker rockfish allocated to the catcher/processor sector would be 30.03 percent of the TAC for the Central GOA. This proposed rule would implement the Council's recommendation to fix the allocation of TAC with these percentages based on an analysis of the relative catch of the catcher/processor sector during the historic fishing periods. The details of this analysis are contained in the EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**).

NMFS would base the CFQ of secondary species assigned to each cooperative on the sum of QS associated with each LLP license assigned to the rockfish cooperative. To determine the CFQ assigned to a rockfish cooperative, NMFS would multiply the TAC of the secondary species that was assigned to each sector by the percentage of the aggregate primary rockfish species QS held by that cooperative in that sector.

Limited access and opt-out fisheries. QS assigned to a limited access fishery or the opt-out fishery would not result in an annual exclusive allocation. Instead, secondary species would be managed according to an MRA in the limited access fishery and the opt-out fishery. The secondary species MRA in the limited access fishery would be reduced from current MRA levels. This approach would reduce the incentive for eligible harvesters to participate in a limited access fishery and ''top off,'' or selectively target high value, secondary species such as trawl sablefish or Pacific cod. The intent of the Program is to increase the economic viability of the rockfish species, not to create an accelerated race for secondary species in the limited access fishery. NMFS believes that lower MRAs would reduce that incentive. This approach was

analyzed in the EA/RIR/IRFA for this proposed action.

The MRA for the opt-out fishery would be the same as MRAs currently applicable in GOA directed fisheries. Participants in the opt-out fishery could not target Central GOA rockfish; therefore, a lowered MRA in the Central GOA is not necessary. Opt-out vessels are largely excluded from the Program and would not be able to use Central GOA rockfish as a source for basis species against which they could account their ''top-off'' secondary species.

''Hard cap'' management of shortraker and rougheye rockfish in the catcher/processor sector. The Council directed that allocations of shortraker and rougheye rockfish should be managed as a ''hard cap'' for the catcher/processor sector. NMFS has interpreted this provision to mean that NMFS should manage to limit the maximum amount of harvests to this amount for all participants in that sector. NMFS therefore would allocate shortraker and rougheye rockfish to each rockfish cooperative by multiplying the percentage of QS assigned to the catcher/processor sector that is held by that cooperative by an amount equal to 30.03 percent of the Central GOA TAC for shortraker rockfish, or 58.87 percent of the Central GOA TAC for rougheye rockfish.

Shortraker and Rougheye rockfish would not be allocated to the limited access sector, but the limited access fishery would be limited to a reduced MRA to minimize harvests and the incentive to ''top off'' on these species. If the catcher/processor sector as a whole exceeded either 30.03 percent of the TAC for shortraker rockfish, or 58.87 percent of the TAC for rougheye rockfish, then NMFS would prohibit retention of that species for all catcher/processor vessels in the Program. This prohibition would include any vessels operating in a rockfish cooperative even if that cooperative still had unused CFQ. The intent of this prohibition is to meet the goals of maintaining catcher/processor harvests below the ''hard cap'' of 30.03 percent of the TAC for shortraker rockfish and 58.87 percent of the TAC for rougheye rockfish.

Halibut PSC Allocation for Rockfish Cooperatives

Under the Program, rockfish cooperatives would be allocated CFQ for halibut PSC that could be used while fishing for primary rockfish species or secondary species. Halibut PSC CFQ would represent the amount of halibut, in metric tons, that could be incidentally caught and killed by a rockfish cooperative. Under current regulations, halibut can only be harvested and retained commercially under the Halibut IFQ Program and Community Development Quota (CDQ) Program; in all other fisheries halibut is considered a prohibited species and must be discarded at sea with a minimum of injury.

NMFS uses the halibut mortality rates established by the International Pacific Halibut Commission (IPHC) and observer data to estimate the amount of mortality of discarded halibut. The IPHC determines the halibut mortality rate for various gears and target fisheries based on data from prior years. These halibut mortality rates are published in the annual harvest specifications and the justification for these rates is published in Appendix A of the annual Stock Assessment and Fishery Evaluation Reports. NMFS estimates the amount of halibut that is killed in the various groundfish fisheries based on data from onboard observers and applies the mortality rate to the unobserved portion of the fleet. NMFS then apportions the available halibut mortality among fisheries. As halibut is caught, NMFS multiplies the estimated halibut caught by the mortality rates to produce a halibut bycatch mortality amount.

Halibut PSC CFQ allocated under the Program would allow cooperatives to continue fishing in fisheries with known halibut bycatch and resulting mortality. Each calendar year, the Regional Administrator would determine the metric tons of halibut bycatch mortality that would be assigned to the Program. This amount would be assigned to the appropriate sector. NMFS would allocate halibut PSC CFQ to rockfish cooperative(s) within a sector based on the QS of LLP licenses assigned to the rockfish cooperatives. Halibut PSC CFQ would be allocated only to participants in rockfish cooperatives.

Halibut PSC assigned to a limited access fishery or the opt-out fishery would not result in an individual allocation. Participants in those fisheries would continue to be subject to the aggregate halibut PSC limits that NMFS establishes for that gear type and target fishery.

Calculation for the sector. The total halibut PSC CFQ assigned to each sector would be determined according to the following procedure:

First, NMFS would sum the amount of halibut mortality by all vessels in a sector during the directed fishery for any primary rockfish species during all qualifying season dates. This would be the rockfish sector halibut bycatch amount.

Second, NMFS would sum the amount of all halibut mortality by all vessels in the Central GOA Regulatory Area from January 1, 1996 through December 31, 2002. This would be the total halibut mortality.

Third, NMFS would divide the rockfish sector harvest by the total halibut mortality and multiply by 100. This would be the percentage of the halibut mortality assigned to the sector in the rockfish fishery.

Finally, NMFS would multiply the percentage of halibut mortality assigned to the sector in the rockfish fishery by the total halibut mortality for the GOA for that year. This would be the halibut PSC amount allocated to the sector.

The amount of halibut PSC CFQ that would be assigned to each cooperative in each sector would be determined according to the following procedures. In each sector, each cooperative would have halibut PSC CFQ assigned to it that would be derived from the QS units assigned to that rockfish cooperative. To determine the CFQ assigned to a cooperative, NMFS would multiply the halibut PSC amount allocated to that sector by the percentage of the aggregate primary rockfish species QS held by that cooperative in that sector.

Example of the Annual Allocations

The following example details the allocation of TAC and halibut PSC within the catcher/processor sector. The calculation method would be similar for the catcher vessel sector except that there is no opt-out fishery for the catcher vessel sector.

First, an ICA amount would be deducted for bycatch needs in other fisheries.

Second, ninety-five (95) percent of the TAC of each of the three allocated rockfish species, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish would be allocated for the non-entry level portion of the Program (*i.e.*, rockfish cooperatives and the limited access fisheries). The remaining 5 percent of the TAC would be allocated to the entry level fishery. To simplify the example, we will assume that half the aggregate QS of the three allocated rockfish species would be allocated to the catcher/processor sector, and half to the catcher vessel sector. Fifty (50) percent of 95 percent of the TAC of each of the three allocated rockfish species would be allocated to the catcher/processor sector and the other 50 percent of 95 percent of the TAC for each of the three species would be allocated to the catcher vessel sector.

Third, we will assume that there are 10 LLP licenses, each with 10 percent of the QS assigned to the catcher/processor sector for the three allocated rockfish species. Eligible rockfish harvesters holding four LLP licenses would assign those LLP licenses to a rockfish cooperative. This represents 40 percent of the total primary rockfish species QS in the catcher/processor sector. This would yield 40 percent of the total TAC assigned to the catcher/processor sector for each of the primary species as CFQ to be harvested by the rockfish cooperative. Eligible rockfish harvesters holding four LLP licenses would assign those licenses to the limited access fishery. This represents 40 percent of the total primary rockfish species QS in the catcher/processor sector. This would yield a limited access fishery TAC of 40 percent of the catcher/processor TAC for each of the primary species. Eligible rockfish harvesters holding two LLP licenses would assign those licenses to the opt-out fishery. This represents 20 percent of the total primary rockfish species QS in the catcher/processor sector.

Fourth, NMFS would reassign the portion of the TAC represented by the QS from the opt-out fishery to the rockfish cooperative fishery and the limited access fishery, in proportion to the holdings of aggregate QS associated with the LLP licenses assigned to each fishery. Because the cooperative and limited access fishery would have the same relative holdings of aggregate QS for the three primary rockfish species (each would have 40 percent of the total), half the opt-out amount would be reassigned to the rockfish cooperative, and half to the limited access fishery. Adding the opt-out amount to their existing allocations means that the rockfish cooperative would be assigned CFQ for each of the primary rockfish species representing 50 percent of the TAC assigned to the catcher/processor sector, and the limited access fishery would be assigned 50 percent of the TAC for each of the primary rockfish species assigned to the catcher/processor sector. The CFQ assigned to the rockfish cooperative could be exclusively harvested by the rockfish cooperative, the eligible rockfish harvesters in the limited access fishery would compete with each other for their collective allocation of this rockfish TAC, in this case 50 percent of the remaining TAC.

Fifth, NMFS would determine the amount of CFQ for secondary species and halibut PSC that would be allocated to the rockfish cooperative. The allocation of CFQ for secondary species and halibut PSC would be based on the percentage of the primary species QS allocation that would be assigned to the rockfish cooperatives in a sector—in the example, 40 percent of the total QS in the sector. The limited access fishery would not receive a TAC of secondary species based on its primary rockfish QS; and the limited access fishery would not receive an allocation of halibut PSC. So, in the example, NMFS would allocate the rockfish cooperative 40 percent of the total CFQ of secondary species and halibut PSC that could be allocated to the catcher/processor sector. The remaining 60 percent of the potential secondary species and halibut PSC CFQ for the catcher/processor sector would not be allocated for that year because 60 percent of the QS in the catcher/processor sector is not assigned to a rockfish cooperative. The harvest amounts of secondary species in the limited access fishery would be controlled by MRAs that apply to that limited access fishery. Halibut PSC usage in the limited access fishery would be subject to existing restrictions on trawl gear.

Rockfish Cooperatives

The Program would regulate the formation of rockfish cooperatives and the use of CFQ. NMFS would issue a CFQ permit to each rockfish cooperative that specified how much CFQ it could harvest. This amount would be based on the sum of the QS of the cooperative members and any CFQ that the rockfish cooperative subsequently receives by transfer from another rockfish cooperative. The Council provided numerous recommendations on the specific requirements to form a rockfish cooperative that this proposed action would implement. Table 4 details those requirements through a question and answer format.

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE

Requirement	Catcher vessel sector	Catcher/processor vessel sector
Who may join a rockfish cooperative?	Only persons who are eligible rockfish harvesters may join a rockfish cooperative. Persons who are not eligible rockfish harvesters may be employed by, or serve as the authorized representative of a cooperative, but are not members.	
What is the minimum number of LLP licenses that must be assigned to form a cooperative?	No minimum requirement.	Two LLP licenses assigned QS in the catcher/processor sector. These licenses can be held by one or more persons.
Is an association with an eligible rockfish processor required?	Yes. An eligible rockfish harvester may only be a member of a cooperative formed in association with an eligible rockfish processor to which the harvester made the plurality of legal landings assigned to the LLP license(s) during the applicable processor qualifying period chosen by an eligible rockfish processor in the application to participate in the Program.	No.
What if an eligible rockfish harvester did not deliver any legal landings assigned to an LLP license to an eligible rockfish processor during a processor qualifying period?	That eligible rockfish harvester can assign that LLP license to any cooperative.	N/A.

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
What is the Processor Qualifying Period?	The processor qualifying period is the four of five years from 1996 through 2000 that are used to establish the legal landings that are considered for purposes of establishing an association with an eligible rockfish processor. Each eligible rockfish processor will select a processor qualifying period in the application to participate in the Program. The processor qualifying period may not be changed once selected for that eligible rockfish processor, including upon transfer of processor eligibility. The same processor qualifying period will be used for all LLP licenses to determine the legal landings that are considered for purposes of eligible rockfish harvesters establishing an association with an eligible rockfish processor.	N/A.
Is there a minimum amount of QS that must be assigned to a rockfish cooperative for it to be allowed to form?	Yes. A rockfish cooperative must be assigned QS that represents at least 75 percent of all the legal landings of primary rockfish species delivered to that eligible rockfish processor during the Processor Qualifying Period selected by that processor.	No.
What is allocated to the rockfish cooperative?	CFQ for primary rockfish species, secondary species, and halibut PSC, based on the QS assigned to all of the LLP licenses that are assigned to the cooperative.	
Is this CFQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CFQ, or a cooperative can transfer all or a portion of this CFQ to another rockfish cooperative.	
Is there a season during which designated vessels must catch CFQ?	Yes, any vessel designated to catch CFQ for a rockfish cooperative is limited to catching CFQ during the season beginning on May 1 through November 15.	
Can any vessel catch a rockfish cooperative's CFQ?	No, only vessels that are named on the application for CFQ for that rockfish cooperative, including any vessels named on amendment(s) to that application, can catch the CFQ assigned to that rockfish cooperative.	
Can the member of a rockfish cooperative transfer CFQ individually without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative, and not individual members, may transfer its CFQ to another rockfish cooperative, but only if that transfer is approved by NMFS.	
Can a rockfish cooperative in the catcher/processor sector transfer a sideboard limit assigned to that rockfish cooperative?	N/A.	No, sideboard limits are limits applicable to that rockfish cooperative, and may not be transferred among rockfish cooperatives.
Is there a hired master requirement?	No, there is no hired master requirement.	N/A.
Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. An eligible rockfish harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
Can an eligible rockfish processor be associated with more than one rockfish cooperative?	No. An eligible rockfish processor can only associate with one rockfish cooperative per year. A person who is permitted as an eligible rockfish processor based on holdings of more than one processing history would be issued a separate eligible rockfish processor permit for that processing history and may be able to form an association with a rockfish cooperative as a separate and distinct eligible rockfish processor subject to any other restrictions that may apply.	N/A.
Can an LLP license be assigned to a rockfish cooperative and the limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any QS assigned to that LLP license yields CFQ to that rockfish cooperative for the calendar year.	
Which members may harvest the rockfish cooperative's CFQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CFQ. A copy of this agreement or contract must be submitted with the application for CFQ.	

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
What happens if the rockfish cooperative catch exceeds its CFQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CFQ. Exceeding a CFQ is a violation of the Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Program regulations while fishing under authority of a CFQ permit. This liability extends to any persons who are hired to catch or receive CFQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Program.	
Is there a limit on how much CFQ a rockfish cooperative may hold or use?	Yes, generally, a rockfish cooperative may not hold or use more than 30 percent of the aggregate primary rockfish species CFQ assigned to the sector for that calendar year. See the *Use Cap* section of the preamble for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See the *Use Cap* section of the preamble for the provisions that apply.
Is there a limit on how much CFQ a vessel may harvest?	No. However, a vessel may not catch more CFQ than the CFQ assigned to that rockfish cooperative.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the sector for that calendar year, unless subject to an exemption. See the *Use Cap* section of the preamble for the provisions that apply.
If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CFQ?	Any vessel authorized to harvest the CFQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or halibut PSC against that rockfish cooperative's CFQ from May 1 until November 15, or until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS. Groundfish harvests would not be debited against the rockfish cooperative's CFQ if the vessel is not authorized to harvest CFQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year.	
What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: • The rockfish cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; • The rockfish cooperative's actual retained and discarded catch of CFQ and sideboard limit on an area-by-area and vessel-by-vessel basis; • A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; • A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

Exception for assigning an LLP to a processor. An eligible rockfish harvester that holds an LLP license with QS for the catcher vessel sector and that does not have landings associated with an eligible rockfish processor from January 1, 1996 through December 31, 2000, may join any rockfish cooperative. However, any such harvester is not considered as contributing to the amount of landings necessary to meet a minimum of 75 percent of the total landings that were delivered to that processor during the four calendar years selected by that processor for the purposes of establishing the minimum landings required to form a rockfish cooperative.

Transfers

The Program would allow transfers of CFQ between rockfish cooperatives. The Program would also permit the transfer of processor eligibility. QS can not be transferred separately from the LLP license. QS could only be transferred by transferring the LLP license with which the QS is associated. Transfer procedures for LLP licenses are in the Federal regulations at 50 CFR 679.4.

Transfer of CFQ

Once NMFS issues CFQ to a rockfish cooperative, it could be fished by members of the rockfish cooperative, or transferred to another rockfish cooperative. A rockfish cooperative in the catcher vessel sector, however, could not transfer CFQ to a rockfish cooperative in the catcher/processor sector. The Council recommended this restriction to address concerns about the loss of shorebased processing, potential employment and tax revenue if catcher/processor rockfish cooperatives could receive rockfish harvested with CFQ from catcher vessel rockfish cooperatives. Transfer of CFQ would be valid only during the calendar year of the transfer.

To standardize the reporting of information, transfers would have to be completed using an application for inter-cooperative transfer available on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by directly contacting NMFS (see **ADDRESSES**). A rockfish cooperative could only transfer CFQ if:

1. The rockfish cooperative identified the amount and type of CFQ transferred

and the rockfish cooperative and rockfish cooperative member to which that CFQ was transferred. CFQ received by a rockfish cooperative would have to be attributed to a member of that rockfish cooperative to apply the use caps (see *Use Cap* section for more detail);

2. The transfer would not cause the receiving rockfish cooperative to exceed its use cap limitations. The rockfish cooperative would be responsible for ensuring that any transfer does not exceed rockfish cooperative use cap provisions; and

3. NMFS approved the transfer.

Transfer of Processor Eligibility

Eligible rockfish processors could transfer their eligibility to another person. Eligible rockfish processors could not suballocate their eligibility or the legal landings that were used to qualify that processor. Any transfer of rockfish processor eligibility would include the entire processing history and eligibility and the specific years that were originally selected to establish linkages with eligible rockfish harvesters. NMFS would prohibit the transfer of portions of processing history. This prohibition would prevent processing history from being divided, creating the potential for a large number of processors to form by transferring the minimum amount of processing history to create new eligible rockfish processors. This prohibition is necessary so that NMFS can reasonably establish which landings were delivered to a specific processor and determine if minimum landing standards to form rockfish cooperatives by a defined group of eligible rockfish harvesters have been met. This prohibition is also consistent with Council intent to limit the number of potentially eligible processors.

Additionally, any transfer of processor eligibility could not be made to a person who would use that processor eligibility to associate with a rockfish cooperative that would receive rockfish or secondary species fish outside the community where the processor eligibility was originally earned. This restriction would prevent a processor from associating with rockfish cooperatives outside of the community in which it historically operated.

A transfer of processor eligibility would require notification to NMFS through an application to transfer processor eligibility available on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by directly contacting NMFS (see **ADDRESSES**). In order for a transfer application to be effective:

1. The transferor and transferee would have to provide identification information;

2. Both the transferor and transferee would have to certify the transfer; and

3. NMFS would have to approve the transfer.

Limited Access Fishery

The Program would establish separate limited access fisheries for eligible rockfish harvesters for the catcher vessel sector and catcher/processor sector. An eligible rockfish harvester would decide to participate in a limited access fishery on an annual basis through an application for the limited access fishery, available on the internet at *http://www.fakr.noaa.gov,* and submitted by December 1 of each year. NMFS would assume that unless an LLP license were assigned to either a rockfish cooperative or the opt-out fishery for the catcher/processor sector, that LLP license would be assigned to the limited access fishery for that sector. This would ensure that all LLP licenses are assigned to at least one of the Program fisheries.

The limited access fishery for both sectors would open on July 1 of each year and would remain open until the TACs for all three primary rockfish species is reached, or until November 15 of each year. NMFS would manage the limited access fishery for the catcher vessel sector and the catcher/processor sector separately. NMFS would announce the closure of a limited access fishery in the **Federal Register**.

The amount of primary rockfish species TAC for the limited access fishery would be a limit on the maximum collective amount of rockfish catch by participating vessels. NMFS would monitor the amount of fish available to a limited access fishery. If the amount of fish available to the fishery were small and the expected harvest rates of the participants in the fishery was high, NMFS could choose not to open that limited access fishery, or could choose to open a limited access fishery for only some of the primary rockfish species (*e.g.,* Pacific ocean perch but not northern rockfish).

If an eligible rockfish harvester assigned an LLP license to the limited access fishery, the QS from that license would be pooled with the QS from all other LLP licenses assigned to the limited access fishery. The limited access fishery would be issued a TAC equivalent to the percentage of the total QS allocated to the limited access fishery in that sector for that primary rockfish fishery. Quota share assigned to the limited access fishery in the catcher vessel sector would be part of the TAC harvested by any eligible rockfish harvester who had assigned an LLP license for use in the limited access fishery in the catcher vessel sector. Likewise, QS assigned to the limited access fishery in the catcher/processor sector would be part of the TAC harvested by any eligible rockfish harvester who had assigned an LLP license for use in the limited access fishery in the catcher/processor sector. Unlike the rockfish cooperative fishery, no exclusive harvest privilege would exist in the limited access fishery. Primary rockfish species harvested by catcher vessels in the limited access fishery would have to be delivered to an eligible rockfish processor.

No CFQ of secondary species or halibut bycatch would be allocated to the limited access fishery. Instead, limited access fishery participants would be subject to an MRA based on the species that they target. The MRA would be a fixed percentage of incidentally caught fish that an eligible rockfish harvester may retain relative to the fish onboard the vessel. In the limited access fishery, the MRA would be measured against the amount of primary rockfish onboard the vessel. Incidental species, such as trawl sablefish, could only be retained as a percentage of the primary rockfish aboard the vessel.

To reduce the potential for limited access participants to ''top-off'' or target potentially valuable incidental species up to the MRA, the MRA assigned to participants in the limited access fishery would be set at a level adequate to allow some retention of these species, but low enough to avoid creating an incentive to specifically ''top off'' on those species. The MRA for the limited access fishery is set at a lower percentage than is currently applied in the rockfish fisheries. A lower MRA for the limited access fishery was recommended by the Council to reduce the incidental harvest of these species. The specific MRA rates for incidental species are provided in Table 30 of the proposed regulatory text.

Opt-Out Fishery

An eligible rockfish harvester that holds an LLP license with QS in the catcher/processor sector could choose to opt-out of many of the Program restrictions. The harvester could make the decision to opt-out on an annual basis by submitting an application to opt-out. The application is available on the internet at *http://www.fakr.noaa.gov,* and would have to be submitted by December 1 of each year. An eligible rockfish harvester holding an LLP license with QS in the catcher vessel sector could not choose to

opt-out of the Program. Some restrictions under the Program would still apply to the use of any LLP license assigned to the opt-out fishery during a year (see the *Sideboard Provisions* section, below). If an eligible rockfish harvester were to assign an LLP license to the opt-out fishery, the harvester could not use that LLP license on a vessel that is participating in a rockfish cooperative, limited access fishery, or the entry level fishery. Effectively, this would preclude a vessel that used an LLP license in the opt-out fishery from directed fishing for the three primary rockfish species in the Central GOA.

Any portion of the TAC that would be derived from the QS associated with an LLP license in the opt-out fishery would be redistributed to the eligible rockfish harvesters participating in cooperatives and the limited access fishery in the catcher/processor sector. This TAC would be redistributed in proportion to the QS holdings in each rockfish cooperative and the limited access fishery for the catcher/processor sector. Any TAC associated with the LLP licences assigned to the opt-out fishery would be reallocated for each year that the LLP license was assigned to the opt-out fishery.

Use Caps

As with other rationalization programs, the intent of the use caps under the Program is to limit the degree of consolidation that could occur in the Central GOA rockfish fisheries. These use caps would balance the goals of improving economic efficiency, maintaining employment opportunities for vessel crew, and providing financially affordable access opportunities for new participants. NMFS would require eligible rockfish harvesters, cooperatives, processors, and catcher/processor vessel operators to submit information through the annual applications, cooperative transfers, and annual catch reports. NMFS would use the information to enforce the use cap provisions, to track primary rockfish species QS use, and dissuade eligible rockfish harvesters from forming corporate arrangements that would frustrate the goal of the use caps. The use caps under this Program apply to the primary rockfish species. Use caps would not apply to the use of secondary species or halibut PSC.

There would be four types of use caps: (1) A cap on the amount of QS an eligible rockfish harvester could hold; (2) a cap on the amount of primary rockfish species CFQ that an eligible rockfish harvester could use; (3) a cap on the amount of primary rockfish species CFQ that a vessel in the catcher/processor sector could harvest; and (4) a limit on the amount of primary rockfish species an eligible rockfish processor could receive and process. Different use caps would apply depending on whether the QS or CFQ are for use in the catcher vessel or the catcher/processor sector. For example, if an eligible rockfish harvester holds an LLP license with QS in the catcher vessel sector, then that harvester would be subject to a use cap that applies to the holding of QS in that sector. If that same eligible rockfish harvester holds a different LLP license with QS in the catcher/processor sector, then that holder would have a different use cap that would apply to the holding of QS in that sector.

Quota share use caps. QS use caps would limit the amount of aggregate primary species rockfish QS that may be held by an eligible rockfish harvester. These QS use caps would be based on the aggregate initial QS pool assigned to each sector. The initial QS pool in each of the three primary species fisheries, would be: Northern rockfish—9,193,182 QS units; pelagic shelf rockfish—7,672,008 QS units; Pacific ocean perch—18,121,812 QS units. The aggregate initial QS pool would be 34,987,002 units. A percentage of the aggregate initial QS pool would be allocated to the catcher vessel sector and a percentage to the catcher/processor sector. An eligible rockfish harvester could not hold more than 5 percent of the aggregate primary rockfish species QS assigned to the catcher vessel sector, or more than 20 percent of the aggregate primary rockfish species QS assigned to the catcher/processor sector.

The Official Record would indicate the relative percentage of the legal landings in the catcher vessel and the catcher/processor sector. NMFS could not determine the exact amount of the initial QS pool that would be assigned to each sector until the applications to participate in the program were processed. NMFS would determine the number of QS units for the catcher vessel and catcher/processor sector QS use cap once the applications are processed. The QS use cap would be based on a percentage of the initial QS pool. NMFS would establish a QS use cap that would not fluctuate with changes in the QS pool that could occur due to the resolution of appeals, or other operations of law that would modify the QS pool. This would provide stability to QS holders.

NMFS would calculate the amount of QS held by an eligible rockfish harvester using the ''individual and collective rule.'' This method is similar to one used in the Halibut and Sablefish IFQ Program. NMFS would include the sum of all QS held individually by an eligible rockfish harvester and the percentage of any holdings used collectively by that eligible rockfish harvester through a corporation, partnership, or other entity.

CFQ use caps. NMFS would apply CFQ use caps to eligible rockfish harvesters, rockfish cooperatives, and processors. NMFS would apply CFQ use caps to limit the amount of CFQ derived from the QS held by an eligible rockfish harvester. As an example, an eligible rockfish harvester could not use an amount of CFQ greater than the amount derived from: 5 percent of the aggregate initial QS pool in the catcher vessel sector; or 20 percent of the aggregate initial QS pool in the catcher vessel sector. An eligible rockfish harvester would be considered to use CFQ if he or she assigns QS to a rockfish cooperative that results in CFQ for use by that rockfish cooperative. The amount of CFQ that is used by an eligible rockfish harvester also would include any CFQ a rockfish cooperative receives by transfer that is attributed to an eligible rockfish harvester. All CFQ received by transfer would have to be assigned to an eligible rockfish harvester who is a member of that cooperative for purposes of calculating use caps. This would limit cooperatives to use no more CFQ than the maximum amount of CFQ that could be derived from the maximum amount of QS that could be held by all of its members. Therefore, the total CFQ usage by an eligible rockfish harvester would be the sum of the CFQ derived from QS held by that eligible rockfish harvester and all CFQ attributed to that eligible rockfish harvester as a result of a CFQ transfer.

CFQ use caps would limit the maximum amount of CFQ that could be assigned to any one cooperative. NMFS would apply CFQ use caps only to rockfish cooperatives in the catcher vessel sector. NMFS would apply the catcher vessel cooperative use cap as a percentage of the aggregate initial QS pool assigned to the catcher vessel sector. Catcher vessel rockfish cooperatives would be limited to using not more than 30 percent of the CFQ allocated to the catcher vessel sector.

The amount of CFQ used by an eligible rockfish harvester would be calculated using the ''individual and collective rule.'' An eligible rockfish harvester's holding of CFQ would include all CFQ attributed to that individual and the percentage of any CFQ attributed to that individual through a corporation, partnership, or other entity. Therefore, CFQ use would

include all CFQ derived from an eligible rockfish harvester's QS holdings, either individually or through corporate ownership, and all CFQ attributed to an individual as a result of an inter-cooperative transfer of CFQ.

NMFS would not apply CFQ use caps to cooperatives in the catcher/processor sector. Although NMFS would not apply a CFQ use cap to catcher/processor cooperatives, NMFS would limit the maximum amount of CFQ that could be used on any one catcher/processor vessel.

Use caps for the catcher/processor sector. NMFS would limit a vessel participating in the catcher/processor sector from harvesting more than 60 percent of the CFQ of primary rockfish species in the catcher/processor sector.

Primary rockfish species processing caps. Eligible rockfish processors would be subject to CFQ use caps. NMFS would limit an eligible rockfish processor from receiving or processing more than 30 percent of the aggregate rockfish primary species that would be allocated to the catcher vessel sector. Unlike the other use caps, this processing limitation would include both CFQ and any primary rockfish species assigned to the limited access fishery. The intent of this use cap is to limit the degree of processor consolidation, including cases where the processor is receiving primary rockfish species harvested under a CFQ permit by a cooperative and by vessels in the catcher vessel sector limited access fishery. NMFS would calculate the usage of aggregate rockfish primary species usage by using the ''AFA 10 percent threshold rule.'' This method is similar to one used in the AFA and the BSAI Crab Rationalization Program. NMFS would include all primary rockfish species received by an eligible processor and all fish received by any other eligible rockfish processor in which that eligible rockfish processor has a 10 percent or greater direct or indirect ownership interest as applying to the use cap calculation. NMFS would apply this more stringent provision to processors to dissuade eligible rockfish processors from forming corporate arrangements that would consolidate the already limited number of distinct processors even further and frustrate the goal of the use cap, which is to limit the degree of consolidation in the fishery.

Table 5 describes the use cap amounts and limits that would apply to eligible rockfish harvesters, rockfish cooperatives, and eligible rockfish processors.

TABLE 5.—USE CAPS IN THE PROGRAM

Entity	Primary species aggregate QS and CFQ use cap based on the initial QS pool assigned to each sector (percent)	
	Catcher vessel sector	Catcher/processor sector
Eligible rockfish harvester	5.0	20.0
Rockfish cooperative	30.0	N/A
Processor	30.0	N/A
Vessel	N/A	60.0

Grandfather provisions. As with other rationalization programs in the North Pacific, the Program would allow those persons whose initial allocation of QS and resulting CFQ is in excess of the use caps to retain that amount. Commonly called ''grandfather provisions,'' these provisions would accommodate participants who historically had greater participation in the fishery than the use caps would allow. Any person eligible for the grandfather provisions would be limited to their initial holdings. If a grandfathered eligible rockfish harvester, processor, or owner of a catcher/processor vessel transferred an LLP license and associated QS, then that person would be limited to that resulting amount, or the use cap, whichever is greater. Table 6 defines the requirements that would apply for qualifying for a grandfather provision.

TABLE 6.—ELIGIBILITY CRITERIA FOR A GRANDFATHER PROVISION

This entity . . .	Meets the grandfather eligibility requirements if . . .
Eligible rockfish harvester	(1) He or she held LLP license(s) at the time of application in the program that would result in QS or CFQ in excess of the use caps; and (2) the LLP license(s) were held by that eligible rockfish harvester prior June 6, 2005 (the time of final Council action on this Program).
Catcher vessel rockfish cooperative	It is comprised of members who include eligible rockfish harvesters that meet the grandfather eligibility requirements.
Processor	It receives and processes CFQ derived from a rockfish cooperative that meets the grandfather eligibility requirements.
Catcher/processor vessel	An LLP license used on that vessel prior to June 6, 2005, is assigned QS that results in CFQ in excess of the use cap, and the CFQ derived from that LLP license is used on that vessel.

Sideboard Provisions

NMFS would expect the Program to improve the economic efficiency of eligible rockfish harvesters, primarily by encouraging consolidation through the use of rockfish cooperatives. NMFS anticipates that rockfish cooperatives would be likely to use fewer vessels to harvest the same amount of fish with less cost, resulting in greater net profits for rockfish cooperative members. NMFS anticipates that some eligible rockfish harvesters could use their vessels and LLP licenses to participate in other groundfish fisheries, particularly cod, flatfish, and rockfish fisheries in the West Yakutat District,

Western GOA, and in the BSAI. With the added economic efficiency likely to be created by this Program, eligible rockfish harvesters could use this economic efficiency to offset operational costs in other fisheries, or expand into new fisheries. This could economically disadvantage harvesters in these other fisheries.

The Council recommended Program elements that would limit the ability of eligible rockfish harvesters to expand into other fisheries. These types of limitations are common to North Pacific rationalization programs and are commonly called sideboards. Sideboards would limit the total amount of harvest by eligible rockfish harvesters in other fisheries. Sideboards would limit the amount of halibut PSC that may be used in certain directed groundfish fisheries. Some of the specific sideboard measures in this Program would prohibit directed fishing for certain groundfish fisheries. Most of the sideboard measures would be in effect only during the month of July. Traditionally, the Central GOA rockfish fishery was open in July, and therefore the sideboards would restrict fishing during the historic timing of the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historic rockfish season.

A sideboard would limit both an LLP license with QS assigned to it, and a vessel on which legal landings were made that could generate QS. This provision would restrict an eligible rockfish harvester from assigning an LLP license to a rockfish cooperative, and using the vessel which generated the QS to target other fisheries. Sideboards would apply to federally permitted vessels fishing in Federal waters and adjacent waters opened by the State of Alaska when the state adopts a Federal fishing season. The opening of State of Alaska waters in concurrence with the Federal fishing season is commonly known as a parallel fishery. The State of Alaska opens a parallel fishery to accommodate harvesters as they target fish stocks that freely move between State and Federal jurisdiction. Harvests in state waters during the parallel fishery are considered part of the Federal TAC because vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Specific sideboards would apply to specific fishery components in the Program. The Council recommended a suite of sideboard measures to meet two broad, potentially competing, goals: To constrain eligible rockfish harvesters from expanding their harvesting capacity in other non-Program fisheries; and to provide an opportunity for harvesters, particularly in the catcher/processor sector, to continue to participate in other fisheries they have historically fished. Sideboards would fall into two broad categories: Sideboard limits that constrain the amount of catch in specific regions and fisheries during July; and directed fishery closures that prohibit fishing in specific fisheries and regions during July. Some sideboards would apply to both sectors, some would apply only to the catcher vessel sector, and some would apply only to the catcher/processor sector. The Program would include five types of sideboards: (1) General sideboards; (2) catcher vessel sideboards; (3) catcher/processor rockfish cooperative sideboards; (4) catcher/processor limited access sideboards; and (5) catcher/processor opt-out sideboards.

General Sideboards

General sideboards would apply to all LLP licenses and vessels that could be used to generate QS. General sideboards would include eligible rockfish harvesters, and any vessel or LLP that could have generated QS, even if the holder of that LLP license or vessel owner did not submit an application to participate in the program. The Council intended that general sideboard provisions would apply to all LLP licenses and vessels potentially eligible for the Program. The Council intended to limit the ability of a person with limited legal landings to choose not to apply for the Program and expand their harvesting opportunities in fisheries that were traditionally harvested by vessel also eligible for the Program. The general sideboard provisions would meet that intent.

The Program would establish a specific exemption from general sideboards for vessels that would be otherwise subject to sideboard restrictions in the GOA under the AFA. Additional sideboards under this Program would impose additional restrictions on already limited vessels under the AFA regulations.

General sideboards would apply to the catcher vessel and catcher/processor sectors. General sideboards would establish a sideboard limit on rockfish harvests in the Western GOA, and West Yakutat District, and halibut PSC limits in the Central GOA, Western GOA, and West Yakutat District during the month of July.

A sideboard limit in the Western GOA and West Yakutat District rockfish fisheries would limit the pounds of fish that could be caught by vessels fishing subject to the sideboard restriction to historic harvest levels. The halibut PSC sideboard limit in the Central GOA, Western GOA, and West Yakutat District would indirectly limit the harvests of specific groundfish flatfish species that historically have been limited not by their TAC, but by halibut PSC. A halibut PSC sideboard would constrain the amount of halibut PSC that can be used when harvesting flatfish species.

The Western GOA and West Yakutat District rockfish sideboard limit would be based on the historic share of catch for a specific rockfish fishery by vessels that generated legal landings that could generate QS under the Program. The sideboard would be determined by measuring catch by these vessels during July from 1996 through 2002, as compared to the total harvests by all vessels during this period in the particular directed groundfish fishery. This would yield a percentage of the total harvests in that directed groundfish fishery. On an annual basis, this percentage would be multiplied by the TAC for that directed groundfish fishery. This amount would be the sideboard limit. Sideboard limits would be assigned to the appropriate sector, either the catcher/processor or the catcher vessel sector.

The EA/RIR/IRFA prepared for this action clarifies that the sideboard provisions would apply only to Pacific ocean perch, pelagic shelf rockfish, and northern rockfish (see **ADDRESSES**). Other rockfish species would not be subject to specific sideboard limits, but would be subject to existing management measures such as MRAs.

NMFS would establish the sideboard limit for each of the three rockfish species (*i.e.*, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish) for each sector using the percentage of historic harvests of that rockfish species for that sector based on calculations in the EA/RIR/IRFA prepared for this action. The EA/RIR/IRFA notes the amount of historic harvest by vessels and LLP licenses subject to sideboards for the three rockfish species in July as a percentage of the total harvests by all trawl vessels in July. This is further detailed by sector and management area. NMFS would establish the sideboard limit for each sector, fishery, and management area based on the computations provided in the EA/RIR/IRFA to provide the industry with sideboard limits that would be based on the best available information and would meet expectations discussed

throughout the public development of the sideboard limits during the Council process.

Table 7 displays the percentage of the annual TAC assigned to each sector for each rockfish fishery in the Western GOA and West Yakutat District based on the information provided in the EA/RIR/IRFA. A discussion of the data and analytic process used in the development of the sideboard amounts is provided in Section 2.5 of the EA/RIR/IRFA. NMFS would not establish a general sideboard limit for northern rockfish in the West Yakutat District because the fishery was not open for directed fishing during 1996 through 2002.

TABLE 7.—SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA ROCKFISH

Management area	Fishery	Catcher/processor sector (percent of the TAC)	Catcher vessel sector (percent of the TAC)
West Yakutat District	Pelagic shelf rockfish	72.4	1.7
	Pacific ocean perch	76.0	2.9
Western GOA	Pelagic shelf rockfish	63.3	0.0
	Pacific ocean perch	61.1	*
	Northern rockfish	78.9	0.0

* Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.

The sideboard limits established in Table 7 would be assigned to each sector for each fishery and would limit the maximum amount of fish that sector could harvest. A specific subset of this fixed percentage would be assigned to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a sideboard limit equal to the percentage of rockfish QS assigned to that cooperative multiplied by the total sideboard limit assigned to the catcher/processor sector for a species in a specific management area. For example, if 61.1 percent of the Western GOA TAC for pelagic shelf rockfish were assigned to the catcher/processor sector, and a rockfish cooperative was assigned 10 percent of the total rockfish QS in the catcher/processor sector (*i.e.,* 10 percent of the aggregate rockfish QS for Pacific ocean perch, pelagic shelf rockfish , and northern rockfish), NMFS would assign that cooperative 10 percent of 61.1 percent, or 6.11 percent of the Western GOA TAC for pelagic shelf rockfish. A sideboard limit specified for a catcher/processor cooperative would limit only that cooperative. This sideboard limit could not be transferred to another cooperative. NMFS would not establish similar sideboard limits for cooperatives in the catcher vessel sector. Table 7 indicates that historically very small amounts of rockfish in the Western GOA and West Yakutat District have been harvested by the catcher vessel sector. Table 7 indicates that historically the catcher/processor sector has harvested most of the rockfish in the Western GOA and West Yakutat District. Cooperative specific sideboards for the catcher/processor sector would reduce the incentive for cooperatives within the catcher/processor sector to race to catch the maximum amount allowed under a sideboard limit and potentially exceed the TAC established for these species.

The Program would establish sideboard limits on how much halibut PSC may be used in the Central GOA, Western GOA, and West Yakutat District in addition to sideboards on rockfish harvests in the Western GOA and West Yakutat District. Halibut PSC sideboards would limit the amount of halibut that may be incidentally caught and killed while fishing for groundfish.

NMFS would base the specific halibut PSC sideboard limit, the limit on the pounds of halibut PSC allocated to vessels fishing subject to a sideboard, on the historic use of halibut PSC in July by vessels in each sector. NMFS would establish distinct halibut PSC sideboards for a shallow-water species complex and a deep-water complex. Because halibut PSC limits in the GOA are established based on fishery complexes based on the depth of the targeted groundfish species, the halibut PSC sideboard limit for the shallow water complex would be based on average halibut PSC by vessels subject to sideboards in the shallow-water flatfish and flathead sole fisheries. The halibut PSC sideboard limit for the deep-waters species complex would be based on average halibut PSC by vessels subject to sideboards in the arrowtooth flounder, deep-water flatfish, rex sole, and rockfish fisheries.

NMFS proposes to establish the sideboard limit for the shallow-water fishery complex and the deep-water fishery complex for each sector based on the historic halibut PSC usage calculated in the EA/RIR/IRFA prepared for this proposed action. The EA/RIR/IRFA describes the amount of historic halibut PSC by vessels and LLP licenses subject to sideboard limits in July as a percentage of the total halibut PSC by all trawl vessels in July for that fishery in that sector and management area. NMFS would establish the sideboard limit for each sector based on the computations provided in the EA/RIR/IRFA to provide the industry with sideboard limits that would be based on the best available information and would meet expectations discussed throughout the public development of the sideboard limits during the Council process.

Table 8 displays the percentage of the annual GOA halibut PSC limit in the shallow-water complex and deep-water complex assigned to each sector in the Central GOA, Western GOA, and West Yakutat District based on the information provided in the EA/RIR/IRFA. The percentage assigned as a sideboard limit would be equal to the annual average halibut PSC by vessels and LLP licenses subject to the sideboard limit during July from 1996 through 2002 in that sector divided by the total average halibut mortality assigned to the GOA trawl sector during 1996 through 2002. During this time period, the average annual halibut PSC was equal to 2000 metric tons. A discussion of the data and analytic process used in the development of the sideboard amounts is provided in Section 2.5 of the EA/RIR/IRFA.

TABLE 8.—SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT, CENTRAL GOA, AND WESTERN GOA ANNUAL HALIBUT MORTALITY

Management area	Sector	Shallow-water complex halibut mortality limit (percent of the GOA annual halibut mortality limit)	Deep-water complex halibut mortality limit (Percent of the GOA annual halibut mortality limit)
Western GOA	Catcher/Processor sector	0.16	1.56
	Catcher Vessel Sector	0.00	0.00
Central GOA	Catcher/Processor sector	0.37	1.78
	Catcher Vessel Sector	6.14	0.98
West Yakutat District	Catcher/Processor sector	0.01	0.65
	Catcher Vessel Sector	0.18	0.10

As with the rockfish sideboard limits, NMFS would establish a specific subset of the halibut PSC limit to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a portion of the catcher/processor sideboard limit equal to the percentage of QS assigned to that cooperative in the catcher/processor sector multiplied by the halibut PSC limit. For example, if 1.78 percent of the Central GOA Halibut PSC is assigned to the catcher/processor sector, and a rockfish cooperative is assigned 10 percent of the total rockfish QS in the catcher/processor sector (*i.e.*, 10 percent of the aggregate rockfish QS for Pacific ocean perch, pelagic shelf rockfish , and northern rockfish), NMFS would assign that cooperative 10 percent of 1.78 percent, or 0.178 percent of the Central GOA halibut PSC. A sideboard limit specified for a catcher/processor cooperative would limit that cooperative. This sideboard limit could not be transferred to another cooperative. NMFS would not establish similar sideboard limits for cooperatives in the catcher vessel sector.

NMFS would manage the sideboard to meet the intent of the Council, which is to maintain a limit on rockfish harvests and halibut PSC during the month of July. NMFS would review the sideboard limits for specific fisheries, sectors, and regions and would not open a fishery if a sideboard limit was not adequate to support harvests or halibut PSC. NMFS would close fisheries for vessels subject to a sideboard if harvests in those fisheries result in the harvest of sideboard species in excess of the sideboard limit. NMFS would use the following standards and require the necessary monitoring to ensure adequate accounting:

First, NMFS would require any vessel subject to sideboard limitations operating in the Central GOA, Western GOA, and West Yakutat District from July 1 until July 31 to adhere to all catch monitoring requirements. This would allow NMFS to assess harvest rates, and monitor harvests in that fishery (see the *Observer* section of the preamble below for more information).

Second, NMFS would require all vessels subject to a sideboard limit to retain all rockfish caught during July 1 through July 31 in the Western GOA and the West Yakutat District. NMFS would require vessels to retain rockfish regardless of the specific target fishery. The goal of the sideboard limit would be to ensure historic harvest levels are not exceeded. NMFS would require retention of rockfish harvested incidental to other directed fisheries (*e.g.*, Western GOA arrowtooth flounder), and debit them against the sideboard limit applicable to that sector. NMFS would prohibit vessels from directed fishing in a specific rockfish fishery in a specific area for a specific sector, if that sideboard limit is reached.

Third, NMFS would debit all halibut PSC in a sector attributed to the shallow-water species complex or deep-water species complex in the Central GOA, Western GOA, and West Yakutat District in July against the shallow-water halibut PSC sideboard or deep-water halibut PSC sideboard limit, as appropriate, for a sector in a specific management area. This would ensure that all halibut PSC in July is debited against the sideboard limit established for the appropriate complex and sector.

NMFS would close directed fishing for non-rockfish fisheries in specific species complexes once the halibut PSC sideboard limit is reached. Specifically, if the halibut PSC limit for the deep-water complex in a management area is reached, NMFS would close directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in that management area. If the halibut PSC sideboard limit for the shallow-water complex in a management area is reached, NMFS would close directed fishing for flathead sole and shallow water flatfish in that management area.

An example of the management of rockfish sideboard limits and halibut PSC sideboard limits follows. Assuming that catcher vessels subject to the sideboard restrictions target Pacific ocean perch rockfish in the Western GOA, then all rockfish harvested by those vessels would be debited against the rockfish sideboard for the catcher vessel sector. Because rockfish are in the deep-water complex, all halibut PSC occurring in the rockfish fishery would be debited against the deep-water species complex halibut PSC sideboard for catcher vessels as well. NMFS would close the deep-water species complex (arrowtooth flounder, deep-water flatfish, and rex sole), for the catcher vessel sector once the halibut PSC sideboard limit is reached. NMFS would still account for any halibut PSC in the rockfish fishery and debit it against the general halibut PSC limit for the GOA. NMFS would close the rockfish sideboard fishery for directed fishing (*e.g.,* Pacific ocean perch), once the rockfish sideboard limit for the catcher vessel sector had been reached.

In the Central GOA, NMFS would calculate the shallow-water halibut PSC sideboard limit and deep-water halibut PSC sideboard limit by including all halibut mortality for that sector in the month of July. NMFS would assign vessels that participate in a rockfish cooperative an allocation of halibut PSC CFQ for the incidental mortality of halibut occurring during the Central GOA Program fisheries. This halibut PSC CFQ allocation would be derived from usage in the rockfish fisheries that are in the deep-water complex. NMFS would debit all halibut PSC in a sector, including CFQ, against the deep-water halibut mortality halibut PSC sideboard limit. This accounting method would ensure that all halibut PSC in July is debited against the proper sideboard limit. If the deep-water halibut PSC

sideboard limit is reached, vessels participating in rockfish cooperatives could continue to use halibut PSC CFQ during the prosecution of their primary rockfish species and secondary species CFQ, but would be precluded from directed fishing for arrowtooth flounder, rex sole, and deep-water flatfish.

Fourth, the sideboard limits recommended by the Council, and which would be implemented by this action, are intended to limit harvests by vessels that are harvesting fish allocated under a TAC. NMFS would account for all catch by federally licensed vessels in Federal waters and the State parallel fishery against the sideboard limit. Additionally, federally permitted vessels would be precluded from fishing in the parallel fishery during July if the sideboard limit for that fishery is reached or the sideboard fishery is not open. NMFS would not manage the activities of non-federally permitted vessels in the parallel fishery or in other state-managed fisheries.

Catcher Vessel Sideboards

The Program recommended by the Council provides for specific sideboard measures for catcher vessels. These sideboard measures include prohibitions on catcher vessels fishing specific groundfish fisheries in the BSAI, and limitations on fishing Pacific cod in the BSAI during July. The prohibition on directed fishing in specific fisheries in the BSAI during July is based on a review of past participation by the catcher vessel fleet. Catcher vessels would be prohibited from directed fishing on species in the BSAI that they have not historically harvested as determined by the Council. These species would include: Alaska plaice; arrowtooth flounder; flathead sole; other flatfish; Pacific ocean perch; rock sole; and yellowfin sole.

BSAI Pacific cod sideboard limits in July would be calculated and managed similar to general sideboards in the GOA. The sideboard restrictions do not provide for specific allocations of sideboard limits to rockfish cooperatives in the catcher vessel sector. The BSAI Pacific cod sideboard limit would apply to the entire catcher vessel sector—rockfish cooperatives and the limited access fishery as a whole. Based on data from the EA/RIR/IRFA, the sideboard limit for BSAI Pacific cod in the catcher vessel sector is likely to be small, and NMFS may choose not to permit directed fishing by vessels subject to the BSAI Pacific cod sideboard limit.

Table 9 summarizes the elements of general sideboards and catcher vessel sideboards.

TABLE 9.—GENERAL AND CATCHER VESSEL SIDEBOARDS

Element	General sideboards	Catcher vessel sideboards
Which sector does it apply to?	Both the catcher vessel catcher/processor sector.	Only the catcher vessel sector.
When does the sideboard apply?	From July 1 through July 31.	
Which LLP licenses are subject to sideboards?	All LLP licenses that are eligible to receive QS under the Program are subject to sideborads, including LLP licenses that could generate QS but were not designated in an application to participate in the Program.	
Which vessels are subject to sideboards?	All vessels with legal landings that could generate QS under this Program.	
Are there any exemptions to this sideboards?	Yes, vessels that are identified as not exempt from GOA sideboards under the AFA, as specified under 50 CFR this 679.63(b)(1)(i)(B), are exempted from these sideboards.	
Does this sideboard prohibit directed fishing in specific groundfish fisheries?	No.	Yes, any vessel or LLP license subject to this sideboard may not directed fish for: Alaska plaice; arrowtooth flounder; flathead sole; other flatfish; Pacific ocean perch; rock sole; or yellowfin sole in the BSAI during July.
Which fisheries are subject to sideboard limits?	Western GOA and Western Yakutat District Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during July.	Pacific cod in the BSAI during July.
How is the sideboards ratio determined?	For each sector, and for each fishery subject to a sideboard, NMFS will: (1) Add up the total retained catch by all vessels subject to sideboards during the month of July during 1996 through 2002; and (2) divide this amount by the total retained catch by all vessels during the same period. The resulting quotient is the sideboard ratio for that sector.	In addition to the general sideboard, for each fishery subject to a sideboard, NMFS will: (1) add up the total retained catch by all vessels subject to sideboards during the month of July during 1996 through 2002; and (2) divide this amount by the total retained catch vessels during the same period. The resulting ratio is the sideboard ratio. Based on the data from EA/RIR/IRFA prepared for this action, this amount represents 0.0 percent of the BSAI Pacific cod average annual TAC during this period.
How is the annual sideboard determined?	The sideboard ratio is multiplied by the TAC for that specific sideboard fishery. If the TAC for that sideboard fishery is divided among management areas, or seasons then the annual sideboard limit is proportionally divided among areas and seasons.	
Is halibut PSC sideboarded in specific directed groundfish fisheries?	Yes, this sideboard limits the amount of halibut PSC that may be used by any vessel fishing in the directed groundfish fisheries in the GOA with a halibut PSC sideboard limit in the: (1) shallow-water complex fisheries; and (2) deep-water complex fisheries.	Yes, under the general sideboards.

TABLE 9.—GENERAL AND CATCHER VESSEL SIDEBOARDS—Continued

Element	General sideboards	Catcher vessel sideboards
How is the halibut PSC sideboard ratio determined?	For each sector, and for the deep water species and the shallow water species complexes, NMFS will calculate the halibut PSC ratio for that sector and fishery complex by: (1) adding up the total halibut mortality by all vessels subject to sideboards in July during 1996 through 2002; and (2) dividing this amount by the total halibut mortality by all vessels during the same period. The resulting ratio is the halibut PSC ratio for that sector and fishery complex.	Yes, under the general sideboards.
How is the annual halibut PSC sideboard limited determined?	For each sector, the halibut PSC sideboard ratio is multiplied by limit the total halibut PSC limit for the deep water species complex, or the shallow waters species complex, as applicable, in the GOA. The annual halibut PSC sideboard limit is proportionally divided among areas based on the proportion of groundfish in the shallow-water or deep-water complex harvested by that sector in that management area in the month of July.	Yes, under the general sideboards.
Does all halibut mortality in species complex in July count against the sideboard limit?	Yes, all halibut mortality counts against a specific species complex in specific management area.	Yes, under the general sideboards.
Which fisheries are closed once a halibut PSC sideboard limit is reached?	*Shallow-water halibut PSC sideboard limit.* For each sector, directed fishing for shallow-water flatfish and flathead sole fisheries is closed once the shallow-water halibut PSC sideboard limit is reached in that management area. *Deep water halibut PSC sideboard limit.* For each sector, directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole once the deep-water halibut PSC sideboard limit is reached.	See general sideboards.

Catcher/Processor Rockfish Cooperative Sideboard Limits

Under the Council's recommendations, the participants in the catcher/processor sector would be subject to specific prohibitions and sideboard limits if they are participating in a rockfish cooperative.

Vessels and LLP licenses assigned to a catcher/processor rockfish cooperative would be prohibited from fishing in BSAI groundfish fisheries from July 1 through July 14, other than fixed-gear sablefish, which is managed under the IFQ Program, and pollock, which is managed under the AFA. This two-week prohibition would limit the ability of participants in the Program to expand harvests in BSAI groundfish fisheries during the historic Central GOA rockfish season.

In addition, the Program would prohibit the harvest of non-Program groundfish except pollock and fixed-gear sablefish (IFQ sablefish) in the GOA during early July by vessels and LLP licenses assigned to a cooperative. The limitation would either be a prohibition on directed groundfish fishing from July 1 to July 14, or if a catcher/processor cooperative does not use any CFQ prior to July 1, then all vessels participating in a cooperative would be prohibited from directed fishing in any GOA non-Program groundfish fishery except fixed-gear sablefish and pollock from July 1 until 90 percent of that cooperative's primary species CFQ has been harvested.

The Council recommended that this prohibition on fishing would not apply if ''NMFS accepts the rockfish cooperative sideboard monitoring program.'' NMFS would require all vessels to maintain adequate monitoring to participate in the Program (See *Monitoring* section of the preamble below for additional details). The extensive monitoring that would be required by catcher/processor vessels participating in a rockfish cooperative would be sufficient to ensure adequate accounting of the sideboard limits. A rockfish cooperative would fail to meet monitoring standards only if it were in violation of these general monitoring provisions.

NMFS proposes not applying this prohibition on fishing in early July to catcher/processors participating in rockfish cooperatives in the GOA for several reasons. First, the monitoring standards required by NMFS would meet the requirements for monitoring sideboard restrictions. Second, applying a prohibition on fishing if a monitoring requirement is not met would require NMFS to provide any affected parties adequate due process to appeal any decisions before implementing the prohibition on fishing. In most cases, NMFS anticipates this due process requirement could not be satisfied in a timely fashion to allow the implementation of the prohibition on fishing. If a catcher/processor vessel participating in a rockfish cooperative fails to meet the monitoring requirements of this Program, it could be subject to enforcement action. If vessels meet the monitoring requirements of this Program, then NMFS would effectively accept the monitoring of sideboard limits by the rockfish cooperative, thereby, meeting the recommendation of the Council that this restriction would not apply if ''NMFS accepts the co-op sideboard monitoring program.''

In addition to the prohibition on fishing in BSAI groundfish fisheries

other than pollock and fixed-gear sablefish from July 1 through July 14, NMFS would assign a portion of the general sideboard limit and halibut PSC sideboard limit in the catcher/processor sector to each catcher/processor rockfish cooperative. The method for assigning a portion of the general sideboard limit to cooperatives is discussed under the *General Sideboards* section of the preamble. The general sideboard limit that would be assigned to a cooperative in the catcher/vessel sector would be subject to the following restrictions: (1) The sideboard limit allocated would be based on the proportion of the QS in the catcher/processor sector assigned to the rockfish cooperative; and (2) a rockfish cooperative could not transfer any sideboard limit specifically assigned to it. These restrictions are necessary to administer the sideboard limits and ensure that a rockfish cooperative does not exceed its limit. Because sideboard limits, in particular the halibut PSC sideboard limit, would be based on data gathered from observers and other data sources, it would not be possible to attribute a sideboard limit to a specific rockfish cooperative in a timely fashion if transfers were permitted. Given the administrative complexities of tracking sideboard transfers accurately and the nature of this Program, a pilot project with a limited duration, NMFS would prohibit sideboard limit transfers to ensure compliance and reduce additional administrative burdens and confusion. The specific sideboard limits for West Yakutat District and Western GOA rockfish applicable to the catcher/processor sector are detailed in Table 9.

A similar method would be used to assign a sideboard limit for the shallow-water halibut PSC sideboard limit and the deep-water halibut PSC sideboard limit to each rockfish cooperative in the Western GOA, Central GOA and West Yakutat District in the month of July. The method for assigning a portion of the halibut PSC general sideboard limits to cooperatives is discussed under the *General Sideboards* section of the preamble. The specific sideboard limits for halibut mortality for the West Yakutat District, Central GOA, and Western GOA rockfish applicable to the catcher/processor sector are detailed in Table 9.

Catcher/Processor Limited Entry Sideboards

NMFS would apply specific sideboards to catcher/processor vessels participating in the catcher/processor limited entry fishery. These sideboards would prohibit fishing in early July for a specific set of catcher/processor vessels. Any vessel using an LLP license with greater than 5 percent of the QS of Pacific ocean perch assigned to the catcher/processor limited access fishery would be prohibited from directed fishing in any BSAI or GOA groundfish fishery except pollock or fixed-gear sablefish from July 1 until 90 percent of the CFQ of Pacific ocean perch assigned to the catcher/processor sector has been harvested.

This sideboard restriction would limit vessels with significant historic participation in the Pacific ocean perch fisheries in the GOA from expanding their activities into other BSAI and GOA groundfish fisheries, specifically BSAI Pacific ocean perch fisheries, during the historic Central GOA rockfish season in early July.

Catcher/Processor Opt-Out Sideboards

In addition to the general sideboards, NMFS would prohibit any catcher/processor LLP license and associated vessel assigned to the opt-out fishery from: (1) Directed fishing in any of the primary rockfish fisheries in the Central GOA during the year; and (2) directed fishing in any GOA groundfish fishery from July 1 through July 14, in which that vessel or LLP license does not have prior participation, except fixed-gear sablefish.

The Program would define prior participation as at least one landing in a directed GOA groundfish fishery during any two years from 1996 through 2002 during specific time periods in early July. The specific time periods for each year during which a landing could be made are: (1) June 30, 1996 through July 6, 1996; (2) June 29, 1997 through July 5, 1997; (3) June 28, 1998 through July 4, 1998; (4) July 4, 1999 through July 10, 1999; (5) July 8, 2000 through July 15, 2000; (6) July 1, 2001 through July 7, 2001; and (7) June 30, 2002 through July 6, 2002.

If a sideboarded LLP license or vessel made a landing in a directed fishery in any two years during these time periods, it could continue to directed fish in that groundfish fishery during July 1 through July 14. If the vessel or LLP license did not meet these criteria, it could not directed fish in that groundfish fishery during July 1 through July 14—except fixed-gear sablefish which is managed under the existing IFQ program. NMFS would consider any landing in a directed groundfish fishery in the Southeast Outside region (Statistical Area 650), as a landing for that directed fishery in the Western Yakutat District (Statistical Area 640) for purposes of considering participation in a directed fishery. This provision would address a unique situation in the Eastern GOA. Area 650 was closed to trawling in 1998 and some vessels that had participated in that region moved their operations to the Western Yakutat District. This provision would accommodate their historic participation patterns in the Eastern GOA.

Table 10 summarizes the sideboard restrictions that are specific to the catcher/processor sector.

TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBOARDS

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
When does the prohibited fishing sideboard apply?	From July 1 through July 14 for sideboards in the BSAI.	The sideboard prohibits fishing in BSAI groundfish fisheries, except fixed-gear sablefish and pollock, from July 1 until 90 percent of the TAC allocated to the catcher/processor limited access fishery is taken.	Some of the sideboard measures apply the entire year, most provisions apply from July 1–July 14.
Which LLP licenses are subject to sideboard?	All LLP licenses that are assigned to a catcher/processor rockfish cooperative.	All LLP licenses that are assigned to the limited access fishery with QS of Pacific ocean perch equal to or greater than 5 percent of the QS of Pacific ocean perch to the catcher/processor sector.	All LLP licenses that are assigned to the opt-out fishery.

TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBOARDS—Continued

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
Which vessels are subject to directed fishing prohibitions?	All vessels with legal landings that generated QS, if that vessel is named on an LLP license assigned to a cather/processor rockfish cooperative.	All vessels with legal landings that generated QS of Pacific ocean perch equal to or greater than 5 percent of the QS of Pacific ocean perch allocated to the catcher/processor sector, if that vessel is named on an LLP license assigned to the limited access fishery.	All vessels with legal landings that generated QS on an LLP license, if that vessel is named on an LLP license is assigned to the opt-out fishery.
Are there any exemptions to these directed fishing prohibitions?	No.		
Does this sideboard prohibit directed fishing in specific groundfish fisheries?	Yes. Any vessel or LLP license subject to this sideboard may not directed fish in any BSAI groundfish fishery, except pollock or fixed-gear sablefish, from July 1–July 14.	Yes. Any vessel or LLP license subject to this sideboard may not: (1) Directed fish in any BSAI groundfish fishery, except pollock or fixed-gear sablefish; or (2) directed fish in any GOA directed sideboard fishery from July 1 until 90 percent of the Pacific ocean perch TAC assigned to the catcher/processor sector has been harvested.	Yes. Any vessel or LLP license subject to this dideboard may not: (1) directed fish in any of the primary rockfish fisheries during the year; and (2) directed fish in any GOA groundfish fishery from July 1 through July 14, in which that vessel or LLP license does not have prior participation, except fixed-gear sablefish, (see the section on *catcher/processor opt-out sideboards* for more information).
Which directed groundfish fisheries are sideboarded?	See general sideboard restrictions.		
How is the groundfish sideboard ratio determined?	For each rockfish cooperative, and for each fishery subject to a sideboard, NMFS will: (1) Add up the total retained catch by all vessels in the rockfish cooperative subject to sideboards during the month of July, from 1996 through 2002; and (2) divide this amount by the total retained catch by all vessels during the same period. The resulting ratio is the sideboard ratio for that sector.	See general sideboard restrictions.	
How is the annual sideboard limit determined?	The sideboard ratio is multiplied by the TAC for that specific sideboard fishery. If the sideboard fishery is divided by management area and season, then the annual sideboard limit is proportionally divided among areas and seasons.	See general sideboard restrictions.	
Is halibut PSC sideboarded in specific directed groundfish fisheries?	Yes, this sideboard limits the amount of halibut PSC that may be used by any vessel fishing in the directed fisheries in the GOA for: (1) Flathead sole and shallow water flatfish—the shallow-water complex fisheries; and (2) arrowtooth flounder, deep water flatfish, and rex sole—the deep-water complex fisheries.	See general sideboard restrictions.	

TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBOARDS—Continued

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
How is the halibut PSC sideboard ratio determined?	For each rockfish cooperative, and for the shallow-water species complex and the deep-water species complex separately, NMFS will calculate the halibut PSC ratio for that sector and fishery complex by: (1) Adding up the total halibut mortality by all vessels subject to sideboards in July during 1996 through 2002; and (2) dividing this amount by the total halibut mortality by all vessels during the same period. The resulting ratio is the halibut PSC ratio for that rockfish cooperative for that fishery complex.	See general sideboard restrictions.	
How is the annual halibut PSC sideboard limit determined?	For each sector, the halibut PSC sideboard ratio is multiplied by the total halibut PSC limit for the deep-water species complex, or the shallow-water species complex, as applicable, in the GOA. If the halibut PSC limit is divided by management area and season, then the annual halibut PSC sideboard limit is proportionally divided among areas and seasons.	See general sideboard restrictions.	

Management of the Sideboards

If NMFS determines that a specific sideboard limit for a directed fishery is small and insufficient to support any retained catch, then the directed fishing allowance for that sideboard fishery may be set to zero for a particular sector, fishery, or area. This determination would be made based on the estimated harvest rates in the fishery, the size of the sideboard limit, and whether that limit can support a directed fishery. The notification of the directed fishing allowance would be established in the harvest specifications that define the allocations to the various fishery components.

After NMFS determines which vessels and LLP licenses would be subject to sideboards, NMFS would inform each vessel owner and LLP license holder in writing of the type of sideboard limitation, provide an opportunity to challenge these findings, and issue a revised Federal fisheries permit and/or LLP license that displays the limitation on the face of the permit or license.

A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation could request reconsideration. All requests for reconsideration would have to be submitted in writing to NMFS, together with any documentation or evidence supporting the request. If the request for reconsideration were denied, affected persons could appeal that decision using existing appeals procedures (see § 679.43 for additional details). During an appeal, an LLP holder appealing the sideboard restrictions applicable to that LLP license or vessel could fish with that vessel or LLP license under appeal in the limited access fishery. Until final agency action on the appeal, NMFS would not reissue that person an LLP license with associated QS. This would limit a person from assigning that LLP license to a rockfish cooperative.

Summary of CFQ Allocations, TACs, and Sideboard Limit Assignments

The assignment of the combination of CFQ allocations, TACs, and sideboards among the various sectors, fisheries, and rockfish cooperatives is complex. Table 11 summarizes the allocations and sideboards that would apply to components in the Program.

TABLE 11.—ALLOCATIONS AMONG THE VARIOUS COMPONENTS OF THE PROGRAM

Fishery component	QS and CFQ			Sideboard limits		
	Primary species	Secondary species	Halibut PSC	Groundfish	Shallow-water halibut	Deepwater halibut
Catcher vessel rockfish cooperative.	Allocation to the rockfish cooperative of CFQ based on the sum of the QS held by all the members. This allocation is for the exclusive use of the rockfish cooperative that holds the allocation. CFQ may be transferred among rockfish cooperatives once allocated. CFQ may not be transferred from a cooperative in the catcher vessel sector to a cooperative in the catcher/processor sector.			Sideboard limits are established for the entire sector, and are not assigned to catcher vessel rockfish cooperatives.		

TABLE 11.—ALLOCATIONS AMONG THE VARIOUS COMPONENTS OF THE PROGRAM—Continued

Fishery component	QS and CFQ			Sideboard limits		
	Primary species	Secondary species	Halibut PSC	Groundfish	Shallow-water halibut	Deepwater halibut
Catcher vessel limited access fishery.	The limited access fishery TAC is based on the sum of the QS assigned to the limited access fishery. This TAC may be harvested by any eligible rockfish harvester participating in the limited access fishery.	No allocation is made. The limited access fishery is subject to an MRA specific to the Program. Halibut is managed as a PSC and is debited off of the general halibut mortality limit applicable to the GOA.		Sideboard limits are established for the entire sector.		
Catcher/processor rockfish cooperative.	Allocation to the rockfish cooperative of CFQ based on the sum of the QS held by all the members. This allocation is for the exclusive harvest of the rockfish cooperative that holds the CFQ. CFQ may be transferred among rockfish cooperatives once allocated.			Sideboard limits are assigned to a catcher/processor rockfish cooperative based on the sideboard ratio attributed to vessels and LLP license that are participating in that rockfish cooperative.		
Catcher/processor limited access fishery.	The limited access fishery TAC is based on the sum of the QS assigned to the limited access fishery. This TAC may be harvested by any eligible rockfish harvester participating in the limited access fishery.	No allocation is made. The limited access fishery is subject to an MRA specific to the Program. Halibut is managed as a PSC and is debited off of the general halibut mortality limit applicable to the GOA.		Sideboard limits are established for the entire sector. Any sideboard limit that is not assigned to a catcher/processor rockfish cooperative is the amount established for the catcher/processor sector, which includes the limited access fishery and vessels in the opt-out fishery.		
Catcher/processor opt-out fishery.	No allocation is made. The opt-out fishery is subject to an MRA applicable to that directed fishery. Vessels in the opt-out fishery may not direct fish in the Central GOA for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish.			Sideboard limits are established for the entire sector. Any sideboard limit that is not assigned to a catcher/processor rockfish cooperative is the amount established for the catcher/processor sector, which includes the limited access fishery and vessels in the opt-out fishery.		

Entry Level Fishery

In addition to rockfish cooperatives, limited access fisheries, and a catcher/processor opt-out fishery, the Program would establish an entry level fishery for all persons who are not eligible rockfish harvesters or processors. NMFS would allocate 5 percent of the Central GOA TAC in the northern rockfish, pelagic shelf rockfish, and Pacific ocean perch fisheries to the entry level fishery. This fishery would provide opportunities for harvesters and processors who had not traditionally participated in the Central GOA rockfish fisheries.

NMFS would not allocate the entry level fishery secondary species, halibut PSC, or sideboards. NMFS would assign TAC of northern rockfish, pelagic shelf rockfish, and Pacific ocean perch to the entry level fishery so that 50 percent (or 2.5 percent of the combined TAC for the three rockfish fisheries) would be assigned to trawl catcher vessels and 50 percent (2.5 percent of the combined TAC for the three rockfish fisheries) would be assigned for fixed gear catcher vessels. Historically, Pacific ocean perch has been harvested almost exclusively with trawl gear. Northern rockfish and pelagic shelf rockfish have been harvested by fixed gear vessels to a limited degree. Rather than allocate Pacific ocean perch equally between the trawl and fixed gear vessels, resulting in Pacific ocean perch remaining unharvested by fixed gear vessels, NMFS would allocate Pacific ocean perch to entry level trawl vessels first. NMFS would allocate any remaining pounds up to the combined 2.5 percent TAC for the three rockfish species from the TAC that would be assigned to northern rockfish and pelagic shelf rockfish. In most years, this would result in Pacific ocean perch comprising most of the allocation to trawl gear vessels.

Harvests of other species in the entry level fishery would be governed by an MRA that applies to vessels targeting these species (see Table 30 to part 679 in the regulatory text for more detail). The entry level fishery for trawl gear would begin on May 1 and end November 15, or when the TAC for each of the rockfish fisheries was reached. The entry level fishery for fixed gear would begin on January 1 and end on November 15, or when the TAC for each of the rockfish fisheries was reached.

In order to participate in the entry level fishery, a person: (1) Could not be an eligible rockfish harvester or

processor; and (2) would have to submit an application to participate in the entry level fishery by December 1. A completed application would contain the following information: (1) Contact information for the applicant; (2) identification of the LLP license and vessel to be used in the entry level fishery (vessels less than 26 feet length overall would not be required to have an LLP under existing regulations); (3) declaration that the harvester has a market for any rockfish delivered in the entry level fishery; and (4) certification by the applicant. NMFS would require a harvester that plans to harvest in the entry level fishery submit information establishing that the harvester has established a market relationship with a processor. This would reduce the potential for harvesters to apply for the entry level fishery but not be able to harvest and deliver fish for lack of a market.

NMFS would account halibut PSC available for trawl vessels in the entry level fishery against the allocation of halibut PSC to the deep-water species fishery complex for that seasonal apportionment. This apportionment is derived from the general halibut PSC apportionment for the GOA, it would not be derived from the same apportionment that applies to Halibut PSC allocated as CFQ, or the sideboard limits for the non-entry level portion of the fishery. If the Halibut PSC allocation in the deep-water fishery complex has been reached or exceeded for that seasonal apportionment, the entry level fishery for trawl vessels, NMFS would close the fishery until deep-water species fishery complex halibut PSC was available.

Halibut PSC available for fixed gear vessels in the entry level fishery would be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the entry level fishery for fixed gear vessels would be closed until the non-trawl deep water species fishery complex halibut PSC is available.

NMFS would make unharvested northern rockfish, pelagic shelf rockfish, or Pacific ocean perch available for harvest by trawl and fixed gear on September 1. Any unharvested rockfish in either the fixed gear or trawl gear allocations could be harvested by trawl and fixed gear vessels beginning September 1.

NMFS would maintain the authority to not open the entry level fishery if it is appropriate for conservation or other management reasons. NMFS would consider factors such as the total allocation, anticipated harvest rates, and number of participants in making any such decision. Because participants in the entry level fishery are required to register to participate, NMFS would have information prior to the opening of the fishery to assess harvest rates and season closures.

Monitoring

As is the case for any quota-based program, NMFS would need to be able to accurately monitor the use of all CFQ, sideboard limits, and use caps. The primary tools for monitoring would include: (1) Requiring the use of observers aboard vessels and at processing facilities; (2) requiring that shoreside and floating processors operate under NMFS approved catch monitoring and control plans (CMCP); (3) requiring the weighing of all catch on NMFS or State of Alaska approved scales; (4) requiring that catcher/processors follow specified procedures when handling catch prior to processing; and (5) requiring that most vessels participating in the rockfish pilot program carry and use a NMFS-approved vessel monitoring system (VMS) transmitter. NMFS welcomes comment on any of the monitoring aspects of the Program.

Observers

Observers would be required aboard vessels and at processing facilities to adequately account for catch and bycatch in the fishery. Observer coverage would increase from existing coverage levels in most cases to ensure that catch accounting is adequate for a quota based fishery. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations and sideboard limits. Observer coverage would be essential to monitor halibut mortality rates in the fishery and ensure that a rockfish cooperative does not exceed its halibut PSC allocation. Observer coverage would also be essential for monitoring primary rockfish species for rockfish cooperatives and the limited access fishery, or to monitor sideboard limits.

Observer coverage would be expanded from existing levels on all vessels fishing under a CFQ permit for a rockfish cooperative, in a limited access fishery, or when subject to sideboard limits. Because much of the catch accounting for the Program would be based on shoreside delivery reports, NMFS would require observers at all processing facilities that receive primary rockfish species or secondary species. This would include both eligible rockfish processors and any processor receiving rockfish in the entry level fishery.

Observer coverage issues were outlined in the EA/RIR/IRFA analysis prepared to support this action (see **ADDRESSES** for more information). Generally, the level and type of observer coverage required under this Program follows models that have been developed for monitoring catcher/processor vessels under the AFA and CDQ Program for catcher vessels, with some important distinctions for the catcher/processor sector. Observer coverage under the Program would maintain existing standards for observer workload restrictions (see § 679.50 for more details on workload regulations). The Program would clarify that an observer assigned to one processing facility could not be assigned to multiple facilities in a day. This would reduce potential conflicts in observer scheduling and ensure adequate coverage of Program catch on shore. Additionally, regulations would clarify that observer coverage required to monitor harvests would be separate from observer requirements in other fisheries.

Observer Coverage for Rockfish Cooperatives

Observer coverage would differ in rockfish cooperatives from the existing requirements for several reasons. Observer coverage for rockfish cooperatives would be similar to that under the CDQ Program, with some importation distinctions. Under the CDQ Program, catcher/processors may choose to designate specific hauls that are attributed to the CDQ Program. The catch from other hauls would be managed according to the directed fisheries that were open at that time. In the CDQ Program, all catch is debited against the CDQ account applicable for that vessel, and all catch is counted and debited against the CDQ allocation.

The CDQ catch accounting model is not applicable for the Program in several respects. First, under the Program, all catch from directed fishing for a primary rockfish species (*e.g.*, Pacific ocean perch) should be counted against the CFQ. In cases where the operator of the vessel chooses which hauls are allocated to which fisheries, it introduces additional accounting complexities. Designating specific hauls prior to fishing would require notification to the observer, and should confusion arise, hauls would likely be attributed to the Program, creating the potential for additional administrative burdens should specific haul

designations be challenged, and significant new accounting burdens on observers. In any case, if a catcher/processor vessel were to designate any haul during a trip as a Program haul, full observer coverage would need to be provided. Observer and other monitoring costs would not be significantly lower if catcher/processor vessel operators were designating non-Program and Program hauls once at sea.

To avoid such complex accounting situations for a two-year pilot program, NMFS would require that all primary rockfish species, secondary species, or halibut mortality attributed to vessels in the cooperative that are specifically authorized to harvest that cooperative's CFQ to be debited against that cooperative's CFQ. NMFS would propose this catch monitoring protocol for vessels harvesting under a CFQ permit to ensure proper accounting of catch. This coverage would apply for any vessel authorized to fish under a CFQ permit from May 1 until November 15, or until a rockfish cooperative notifies NMFS that the rockfish cooperative is no longer fishing under the Program and rescind fishing privileges to any remaining CFQ. This ''check out'' procedure could occur after the cooperative has transferred its CFQ to another cooperative, thereby limiting the loss of any unused CFQ.

This check-out procedure would ensure that vessels are fully monitored as long as the rockfish cooperative holds CFQ. The check-out process would be made through a formal Declaration for Termination of Fishing. Once this declaration is made, the CFQ issued to that rockfish cooperative would be set to zero for all primary rockfish species, secondary species, and halibut PSC, and that cooperative could no longer receive CFQ by transfer.

If a vessel is named on an LLP license that is assigned to a cooperative, and that vessel is not authorized to fish the CFQ for that cooperative, that vessel would be subject to current non-Program observer coverage requirements. Vessels named on LLP licenses assigned to a cooperative, but not authorized to fish under a CFQ permit, could continue to fish in other non-Program fisheries. Any secondary species (*e.g.*, Pacific cod), or halibut PSC caught by these vessels would not be debited against the CFQ for the cooperative, and would be subject to existing regulations that apply to the management of non-Program fisheries.

NMFS would also permit the authorized representative of a cooperative to redesignate the vessels assigned to fish that cooperative's CFQ. This would accommodate changes in vessel availability and accommodate any unforeseen circumstances (*e.g.*, mechanical failure). However, any such redesignation would need to be submitted to NMFS 48 hours prior to that vessel fishing under a CFQ permit. To ensure proper accounting of fish aboard a vessel, any vessel that is redesignated to fish under the cooperative's CFQ permit, could not have fish onboard the vessel prior to fishing under a CFQ permit. Additionally, that redesignated vessel would need to meet all other applicable monitoring requirements.

The specific level of observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 12. Generally, observer coverage is greater for catcher/processors than catcher vessels due to the nature of shipboard operations and the difficulty for one observer to adequately monitor catch.

Observer Coverage for Limited Access Fisheries

Observer coverage requirements in the limited access fisheries would be similar to those vessels assigned to cooperatives. However, observer requirements for vessels in a limited access fishery would not begin until July 1. These requirements would remain in place until November 15, or until NMFS closes directed fishing for all three of the primary rockfish fisheries for the limited access fishery. Typically, these fisheries close in mid-July. Observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 12. NMFS would require observer coverage adequate to ensure proper management of the TAC. This would be particularly critical in the limited access fisheries because the TAC assigned is likely to be small and limited observer coverage could reduce the ability of NMFS to close fisheries in a timely manner.

Observer Coverage for Sideboard Fisheries

NMFS would require observers on all vessels subject to sideboard limits that directed fish in the West Yakutat District, Central GOA, and Western GOA during July. This would help to ensure that vessels do not exceed the general sideboard limits. The sideboard limits for the Western GOA and West Yakutat District rockfish fisheries are likely to be small relative to potential harvest rates and would need to be intensively managed to ensure adequate catch accounting and avoid exceeding sideboard limits. Additionally, the sideboard limits that would be established for halibut PSC in the deep-water and shallow-water fishery complex would need to be managed based on data gathered by observers. These halibut PSC limits are small relative to potential halibut PSC rates. Additional observer coverage for managing sideboard limits would not be required in the West Yakutat District, Central GOA, or Western GOA after July 31. Vessels fishing under a CFQ permit, or in a limited access fishery in the Central GOA after July 31, would still be subject to any applicable additional observer requirements established under this Program.

Observer Communication System

To ensure timely collection of data, NMFS would require that catcher vessels less than 125 feet length overall install and maintain a computer for use by an observer when the vessel is required to meet observer coverage requirements for the Program. This would include all catcher vessels fishing for a rockfish cooperative, in the limited entry fishery, or in the West Yakutat District, Central GOA, and Western GOA during July. Alternatively, vessels that already have computers which meet NMFS specifications could provide the observer access to that computer. NMFS would install custom software on each of these computers. This software would allow the vessel's observer to enter and edit data, which could be transferred to a disk and sent electronically to NMFS from a plant observer's computer.

Currently, all vessels that carry an observer 100 percent of the time, as well as all shoreside and stationary floating processors required to have an observer present, are required to maintain a computer for use by an observer as part of the Observer Communication System (OCS). The OCS was implemented in 1995 and is comprised of: (1) Electronic hardware that meets NMFS specifications and is supplied by the vessel, shoreside, or stationary floating processor, and (2) dedicated software provided by NMFS. This hardware and software allow observers to communicate with, and transmit data to, NMFS.

Although a component of the OCS allows observers to communicate with and transmit data directly to NMFS, all participating catcher vessels that are not currently required to carry an observer 100 percent of the time (those less than 125 feet) would only be required to provide the computer component of the OCS. This is because these vessels make short duration trips and, at this time, the costs of requiring communications equipment outweigh the benefits of

increased timeliness of data transmission.

NMFS anticipates that enabling observers to enter and send their data electronically would result in significant reductions in the time required to provide data to NMFS and rockfish cooperative managers. Under the Program, vessels and rockfish cooperatives would be required to monitor their catch and stop fishing when target and PSC allocations are reached. For catcher vessels, target species would be required to be retained and delivered to a shore based processor where they can be weighed and accounted for on a trip by trip basis. Information on these species would be available within 2–3 days of delivery. However, halibut would be required to be returned to the sea with minimal injury, and, as mentioned above, catch accounting would be based on expanded observer samples. Observer data from vessels is faxed to NMFS, keypunched by NMFS staff, and typically made available within a few days of receipt. However, observers are often not able to fax their data from the current trip. Rather, NMFS staff typically receive data from the previous trip. Altogether, delays with faxing data could result in up to two weeks delay in making data available to rockfish cooperative and NMFS managers. When seasonal catch amounts near allocation limits, this could delay vessels' departures until halibut PSC data become available.

While fishing under the Program would slow as a result of rationalization, these delays could result in increased costs to vessels due to additional time spent in port. Additionally, NMFS in-season managers may choose not to open directed sideboard fisheries if data are not received in enough time to make timely closure decisions and there is a risk of overfishing. This would reduce the potential revenue of participating vessels and processors.

Data entered electronically by observers also result in significant improvements to overall data quality. Custom software provided by NMFS has several built-in data checking functions that will not allow some erroneous information to be entered, and automatically checks for likely keypunch errors. Additionally, NMFS staff that identify data errors may be able to resolve these errors quickly by working with the observer. This could result in improved management decisions by rockfish cooperatives and NMFS managers. The computer hardware and software requirements are specified in the regulatory text at § 679.28.

Alternatives to requiring computers on catcher vessels participating in the Program include allowing vessel observers to enter and send data on a shoreside computer and requiring observer providers to purchase computers to be deployed with the observer. NMFS considered and rejected these alternatives for the following reasons. First, allowing observers to enter data on a shoreside computer could result in significant departure delays for the vessel. An observer would have to arrange a time when other vessel observers, or the plant observer, were not using the computer. Then they would have to enter and send their data. The time needed to complete these activities could take longer than the offload of catch and delay departure of the vessel. Second, because of the service delivery model used to procure observers, there are logistical concerns if observer providers were required to provide computers for observers.

Table 12 summarizes the observer requirements for the various components of the Program. Unless noted, the Program would not affect existing observer coverage that may apply to a vessel or processor when they are engaged in non-Program fisheries.

TABLE 12.—OBSERVER REQUIREMENTS IN THE PROGRAM

Component	Requirement	When applicable
A catcher/processor fishing in a rockfish cooperative.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel under a CFQ permit. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on May 1 for all vessels harvesting CFQ for a rockfish cooperative and end on November 15, or upon the approval of a declaration to terminate fishing by the rockfish cooperative.
A catcher/processor fishing in a limited access fishery.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel in the limited access fishery. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on July 1 for all vessels participating in a limited access fishery and end on November 15, or when the limited access fishery for all primary rockfish species is closed by NMFS.
A catcher/processor fishing in the West Yakutat District, Central GOA, or Western GOA during the month of July.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on July 1 for all vessels participating in groundfish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA and end on July 31.
A catcher vessel fishing in a rockfish cooperative.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish under a CFQ permit. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on May 1 for all vessels harvesting CFQ for a rockfish cooperative and end on November 15, or upon the approval of a declaration to terminate fishing by the rockfish cooperative.

TABLE 12.—OBSERVER REQUIREMENTS IN THE PROGRAM—Continued

Component	Requirement	When applicable
A catcher vessel fishing in a limited access fishery.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish in a limited access fishery. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on July 1 for all vessels participating in a limited access fishery and end on November 15, or when the limited access fishery for all primary rockfish species is closed by NMFS.
A catcher vessel fishing in the West Yakutat District, Central GOA, or Western GOA during the month of July.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on July 1 for all vessels participating in groundfish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA, and end on July 31.
A shoreside or stationary floating processor.	Must provide a NMFS-certified observer for each consecutive 12-hour period each day it receives deliveries from catcher vessels fishing in a rockfish cooperative, limited access fishery, or entry level fishery.	

Catch monitoring and control plan (CMCP). The owner and manager of a shoreside or stationary floating processor would have to ensure that the facility is operating under an approved CMCP whenever receiving fish allocated to the Program. An acceptable CMCP describes how landings can be monitored effectively by a single observer, how scales will be tested and used, and ensures that adequate facilities are made available for observers (see § 679.28(g) in the regulatory text for more details). The CMCP requirements apply to the AFA, and the Program would not modify these requirements but merely extends their applicability to processing facilities participating in this Program.

Special catch handling requirements for catcher/processors. NMFS recognizes that there would be a strong incentive for Program participants to under-report the amount of halibut caught as bycatch. Halibut PSC may not be retained by the vessel and thus has no economic value. However, it is quite possible that the lack of sufficient halibut PSC could limit the amount of primary rockfish species harvested by Program participants and under reported halibut PSC could potentially allow the under reporting vessel or rockfish cooperative to harvest a larger amount of target species. This is particularly true for vessels in rockfish cooperatives because this Program would allocate a share of available halibut PSC to rockfish cooperatives as CFQ. Lack of sufficient halibut PSC CFQ could limit the ability of rockfish cooperatives to fully harvest their CFQ for primary rockfish species and secondary species.

Both catcher vessels and catcher/processor vessels would be monitored to ensure proper compliance with all reporting requirements. However, the opportunity to under-report halibut PSC would be greater on catcher/processor vessels than catcher vessels due to the placement of observer sampling stations and construction of the vessels. These factors reduce the ability for observers to adequately monitor the passage of fish, particularly halibut PSC, from the net through the processing facilities. In order to ensure proper catch accounting on catcher/processors, NMFS has developed a set of special catch handling requirements for catcher/processors. In brief, these special catch handling requirements would:

1. Prohibit a vessel from having fish remain on deck outside of the codend;

2. Prohibit the use of multiple lines for conveying the fish between the bins and the area where unsorted catch is sampled by the observer; and

3. Require observation and monitoring of all crew activities within any bin or tank prior to the observer sampling unsorted catch.

Catcher/processors may facilitate observation and monitoring of crew activities within a bin or tank by one of three options:

1. Prohibit crew members from entering bins unless the observer is able to monitor all crew activities within the bin;

2. Install viewing ports in the bins; or

3. Install video monitoring system in the bins.

Each vessel participating in a Program fishery must choose one of these options.

Vessel operators which choose the first option must ensure that crew members do not enter a bin when fish are moving out of the bin, unless the observer has been given a chance to observe the activities of the crew inside the bin. Based on conversations with vessel owners and operators in this sector, a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. Crew members would be allowed inside bins if the flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that the vessel crew must enter the tank. When informed by an observer that all sampling has been completed for a given haul, crew would be able to enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station. Vessel operators may be able to use water to facilitate the movement of fish in some fisheries. However, industry has indicated that water may degrade the quality of fish, which could decrease the value of these fish. Therefore, options were developed to allow a person to see inside the bin while fish are exiting the bin, and ensure that presorting activities are not occurring.

Vessels that choose the second option would be required to provide a viewing window into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position they are conducting their normal sampling duties. For example, while the observer is sorting catch at the observer sample station table, crew member activities inside the bin must be viewable by the observer through the window from the sample station table. This option would be acceptable for vessels that may not need a crew member in the bin frequently or have uniformly shaped bins and an observer sampling station in close proximity to the bin area.

Vessels which choose the third option would be required to develop and install a digital video monitoring system. The system would include a sufficient number of cameras to view all activities of anyone inside the bin. Video cameras would be required to record images in color and in low light

conditions. To ensure that an observer can monitor crew member activities in the bin while sampling, a color monitor would be required to be located in the observer sampling station. An observer would be given the opportunity to review any video data at any time during a trip. Each video system would be required to provide enough storage capacity to store all video data for an entire trip. Because NMFS may not be aware of potential presorting violations until after an observer disembarks the vessel and is debriefed, the vessel must retain all data for a minimum of 120 days from the beginning of each trip unless notified by NMFS that the data may be removed. Specific requirements for cameras, resolution, recording formats, and other technical information is detailed in the regulatory text under § 679.84(a) through (e).

If at any time during a trip, the viewing port or video options do not allow an observer to monitor crew activities within the fish bin or do not meet the required specifications, the vessel must revert to the first option and prohibit crew from entering the bin. The use of any of these three options would be approved by NMFS during the vessel's annual observer sampling station inspection as described at § 679.28(d).

Vessel Monitoring System (VMS). As is required for many other rationalization programs in the North Pacific, most vessels participating in the Program would be required to install, maintain, and operate an electronic VMS while fishing. A VMS allows NMFS to track a vessel's location, providing useful enforcement information and safety benefits by providing additional information during search and rescue operations. Currently, a VMS is required for any vessel with a Federal fisheries permit endorsed for Pacific cod, pollock, or Atka mackerel that is operating in any reporting area off Alaska when the fishery for which the vessel is endorsed is open. VMS is also required for vessels operating in the AFA and BSAI Crab Rationalization Program. The Program would extend existing VMS coverage to any vessel with a Federal fisheries permit endorsed for a Program fishery and would require that those vessels have a transmitting VMS on board at all times when operating off Alaska when the Program fishery for which they are endorsed is open. Non-trawl vessels participating only in the entry level fixed-gear fishery would be exempted from the new VMS requirements but would still be required to use a VMS if endorsed for other species/gear combinations for which VMS is required. The existing VMS requirements are detailed in § 679.28(f).

The Program would require that all vessels operating in a rockfish cooperative, limited access fishery, opt-out fishery, or trawl gear entry level fishery use a VMS. The EA/RIR/IRFA prepared for this action (see **ADDRESSES**) indicated that all of the vessels that have legal landings in the Central GOA rockfish fishery are currently required to use a VMS. Some of the trawl vessels that choose to participate in the entry level fishery may not already be covered under existing VMS requirements for directed fishing in the Atka mackerel, Pacific cod, or pollock fisheries. If vessels participated in the entry level fishery, a VMS would be required. A VMS would not be required for vessels fishing in the fixed gear portion of the entry level fishery. The EA/RIR/IRFA prepared for the Program indicates that there is likely to be relatively little participation by fixed gear vessels in the entry level fishery. The Council recommended and the Program would exempt fixed gear entry level vessels from the VMS requirements that apply to other vessels.

Changes in recordkeeping and reporting. The Program would require some modification of existing recordkeeping and reporting (R&R) requirements in § 679.5. In addition to the R&R requirements already described to apply for and participate in the Program, R&R requirements would be revised to require Program participants use the Shoreside Processor Electronic Logbook Report (SPELR) to report data. The SPELR is software used by shoreside processors and stationary floating processors (SFPs) to electronically report groundfish data to NMFS.

As groundfish, rockfish are recorded and reported through existing R&R systems described in the regulations under § 679.4. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as rockfish cooperatives would be required to submit a rockfish cooperative catch report detailing each cooperative's delivery of fish. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as rockfish cooperatives would be required to submit a rockfish cooperative annual report detailing the use of the cooperative's CFQ.

Integration With BSAI Crab Rationalization and AFA Sideboards

This Program would implement limits or allocations for numerous fisheries in the GOA, but is not otherwise intended to affect management of existing sideboard limits that exist in other fisheries. The management of allocations under this Program would be integrated with existing limitations in other rationalized fisheries. Under the AFA, the inshore sector is limited to their historic harvests in the GOA. This would continue to be the case under this Program. Vessels subject to AFA sideboards in the GOA would be exempt from the sideboard provisions applied under the Program, but the Program would not exempt AFA vessels from AFA sideboards. Similarly, vessels and LLP licenses that are subject to sideboard provisions in the BSAI Crab Rationalization Program would continue to be subject to the sideboards implemented under that program. This proposed action would not modify the regulations that apply to sideboards in the AFA or the BSAI Crab Rationalization Program.

Classification

At this time, NMFS has not determined that Amendment 68 and the provisions in this rule that would implement Amendment 68 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see **DATES**).

Environmental Assessment

The Council prepared an environmental assessment for Amendment 68 that discusses the impact on the environment as a result of this rule. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**). The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries, including the ''no action'' alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EA presents three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3).

Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative—the rockfish cooperative alternative. These alternatives constitute the suite of ''significant alternatives,'' under the proposed action, for purposes of the Regulatory Flexibility Act (RFA). Each is addressed briefly below. Please refer to the EA and its appendices for more detail. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo, the Central GOA rockfish fisheries have followed the well known pattern associated with managed open access. Central GOA rockfish fisheries have been characterized by a ''race-for-fish'' capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the rockfish fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. As indicated in the IRFA, many small entities, as defined under RFA, are negatively impacted under current open access regulations. The management tools in the existing FMP (*e.g.*, time/area restriction and LLP licenses) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program was needed to improve fisheries management in accordance with the Magnuson-Stevens Act.

The rockfish cooperative alternative would allocate annual harvesting privileges of rockfish and secondary species TAC to harvester rockfish cooperatives, creating a transferable access privilege as a share of the TAC, thus removing the ''common property'' attributes of the status quo on qualifying harvesters. The rationalization of the Central GOA fisheries would likely benefit the approximately 63 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race for fish against larger businesses. The rockfish cooperative alternative would allow these operators to slow their rate of fishing and give more attention to efficiency and product quality.

The participants would be permitted to form rockfish cooperatives that could lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the cooperative's CFQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, the rockfish cooperative alternative holds promise by providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains accruing to harvesters and processors under this management regime cannot be provided. Nonetheless, it appears that the rockfish cooperative alternative offers improvements over the status quo through the institution of a ''rights-based management'' structure. The rockfish cooperative alternative also includes provisions for fishery participants the Council expressly sought to include—specifically, rockfish processors and the community in which those processors have historically been active.

The rockfish cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than an alternative that allocates limited processing licenses (Alternative 2 for catcher vessels), or that defines a smaller portion of the TAC for competition among a fixed number of vessels (Alternative 3 for catcher/processors).

After an exhaustive public process spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries. Specific aspects of the RIR are discussed under the heading of the IRFA.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble. Copies of the EA/RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). A summary of that analysis follows.

Why action by the agency is being considered and objectives of, and legal basis for, the proposed rule. The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 802 of the Consolidated Appropriations Act of 2004 and the Magnuson-Stevens Act provide the legal basis for the proposed rule, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the Central GOA rockfish fisheries. By ending the race for fish, NMFS expects the proposed action to increase resource conservation, improve economic efficiency, and address social concerns.

Number of small entities to which the proposed rule will apply. The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. The IRFA estimates that as many as 63 entities, that own approximately 48 catcher vessels and 15 catcher/processor vessels, would be eligible to receive QS under the Program. The IRFA estimates that approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that would choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

In addition, six entities that process rockfish are estimated to be eligible rockfish processors and would be

regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the $4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and would be regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the processing segment of the entry level fishery cannot be predicted.

Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry-level fishery), 45 are estimated to be small entities because they generated $4.0 million or less in gross revenue based on participation in 1996 through 2002. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA. No catcher vessel individually exceeds the small entity threshold of $4.0 million in gross revenues. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving an estimated many as 45 small catcher vessel entities that are directly regulated by this action. The ability to estimate the number of small entities that operate catcher vessels regulated by this action is limited due to incomplete information concerning vessel ownership.

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Based on data from NOAA Fisheries, there are approximately 171 LLP licenses that would be qualified to fish in the Central GOA entry level trawl fishery, and 900 LLP licenses that would qualify to fish in the entry level fixed gear fishery. However, it is not possible to determine how many persons may hold these LLP licenses and chose to participate in the entry level fishery at the time of application to participate in the fishery. The number of persons holding LLPs is likely to be less than the total number of LLP licenses that may be used to participate in the entry level fishery because a person may hold more than one LLP license at a time.

Six entities made at least one rockfish landing from 1996 to 2002, but none appeared to qualify as an eligible rockfish harvester. Five of these entities are not small entities and one entity qualifies as ''small'' by Small Business Administration (SBA) standards. The non-small entities owned five catcher/processors. The one small entity owns a catcher vessel. Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold an LLP license. Moreover, the vessels the IRFA considers ''non-qualified'' could not or would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and Final Regulatory Flexibility Analysis (FRFA) prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this IRFA.

For purposes of the RIR, the community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Projected reporting, recordkeeping and other compliance requirements. Implementation of the Program would change the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

NMFS would be required to develop new databases to monitor harvesting and processing allocations. These changes could require the development of new reporting systems.

To participate in the Program, persons would be required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour. Persons would be required to complete most of the forms at the start of the Program, such as the application to participate in the Program. Persons would be required to complete some forms every year, such as the application to fish in a rockfish cooperative, limited access fishery, or opt-out fishery. Additionally, reporting for purposes of catch accounting, or transfer of CFQ among rockfish cooperatives would be completed more frequently.

It would cost participants in the Program an estimated $56 to complete applications to participate in the Program, $55 for the annual application to participate in a rockfish cooperative, limited access fishery, or opt-out, $61 to complete a transfer of CFQ, and $61 to complete a transfer of rockfish processor eligibility.

NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (internet version and optional fax version) would be used to debit CFQ. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the proposed electronic reporting system would provide continuous access to accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more comfortable with the paper based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS would also provide an

optional backup using existing telecommunication and paper based methods, which would reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

Under this proposed rule, catcher/processors would be required to purchase and install motion-compensated scales to weigh all fish at-sea. Such scales would cost on a one-time basis, approximately $69,000 per vessel. Currently a flow scale costs $60,000, an observer platform scale $8,500, and test weights $500. Additional costs on a one-time basis associated with the installation of the scales are estimated to be between $10,000 and $40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements would cost approximately $6,235 per year. Based on discussions with equipment vendors, NMFS estimates that six catcher/processors, one of which is a small entity, would choose to fish under the Program and would be required to have scales.

NMFS would increase observer coverage for Program participants in most cases. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and halibut mortality rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form rockfish cooperatives, which would limit the number of vessels required to harvest a cooperative's CFQ, and organize fishing operations to limit the amount of time when additional observer coverage would be required and offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage would cost approximately $400 per day. Additional costs may be associated with catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary from vessel to vessel depending on specific conditions on that vessel.

For monitoring of processing activity, it would cost shore-based processors approximately $416 to complete the catch monitoring plan and an additional $2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels, except for non-trawl entry level vessels, participating in the Program would be required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement would impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. NMFS does not estimate that any additional vessels would incur this cost if they choose to participate in the Program. This estimate is based on information on those vessels that may participate in the Program which are already subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sample station, and the type of viewing port installed. These costs cannot be estimated with existing information.

Because NMFS has chosen to implement the video option using performance standards, the costs for a vessel to implement this option could be quite variable, depending on the nature of the system chosen. In most cases, the system would be expected to consist of one digital video recorder (DVR)/computer system and between two and five cameras. DVR systems range in price from $1,500 to $10,000, and cameras cost from $75 to $300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between $400 and $3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately $2,000, a complex installation will cost approximately $10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation would be expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, we estimate an annual cost of $680 to $4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

Federal rules which may duplicate, overlap or conflict with the proposed rule. No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

Collection-of-Information

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements are listed by OMB control number.

OMB Control No. 0648–New (Pending Approval)

Two (2) hours for application to participate in the Program; 2 hours for the application for CFQ; 2 hours for the application for the limited access fishery; 2 hours for the application for the entry-level fishery; 2 hours for the application to opt-out; 2 hours for the application for inter-cooperative transfer; 2 hours for the application to transfer processor eligibility; 4 hours for annual rockfish cooperative report; 6 minutes for rockfish cooperative catch report; 4 hours for a letter of appeal, if denied a permit; 15 minutes for a rockfish cooperative termination of fishing declaration; and 15 minutes for modification of the application for CFQ for vessels authorized to fish CFQ.

OMB Control No. 0648–0515

Fifteen (15) minutes for application for user ID; 35 minutes to electronically submit landing report and print receipts.

OMB Control No. 0648–0330

Forty (40) hours for complying with special catch handling requirements for catcher/processors; 40 hours for catch monitoring and control plan (CMCP).

This rule contains collection-of-information requirements subject to the PRA and which have been approved by

OMB. Public reporting burden per response for these requirements are listed by OMB control number.

OMB Control No. 0648–0213

Fourteen (14) minutes for Vessel Activity Report; 20 minutes for product transfer report; 28 minutes for catcher vessel longline and pot gear daily fishing logbook; and 41 minutes for catcher/processor longline and pot gear daily cumulative production logbook.

OMB Control No. 0648–0445

Twelve (12) minutes for VMS check-in form; 6 hours for VMS installation; 4 hours for VMS annual maintenance; and 6 seconds for each VMS transmission.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to NMFS (see **ADDRESSES**), and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 23, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–199, 118 Stat. 110.

2. In § 679.2, add the definitions of ''Cooperative fishing quota (CFQ)'', ''Eligible rockfish harvester'', ''Eligible rockfish processor'', ''Eligible rockfish entry level harvester'', ''Eligible rockfish entry level processor'', ''Halibut PSC sideboard limit'', ''Initial rockfish QS pool'', ''Legal rockfish landing for purposes of qualifying for the Rockfish Program'', ''Non-allocated secondary species'', ''Official Rockfish Program record'', ''Opt-out fishery'', ''Primary rockfish species'', ''Rockfish cooperative'', ''Rockfish entry level fishery'', ''Rockfish halibut PSC'', ''Rockfish limited access fishery'', ''Rockfish Program'', ''Rockfish Program fisheries'', ''Rockfish Program species'', ''Rockfish Quota Share (QS)'', ''Rockfish QS pool'', ''Rockfish QS unit'', ''Rockfish sideboard fisheries'', ''Secondary species'', ''Sector for purposes of the Rockfish Program'', ''Sideboard limit for purposes of the Rockfish Program'', ''Sideboard ratio for purposes of the Rockfish Program'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' in alphabetical order to read as follows:

§ 679.2. Definitions.

* * * * *

Cooperative fishing quota (CFQ) means: (1) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative that may lawfully harvest an amount of the TAC for a primary rockfish species or secondary species while participating in the Rockfish Program;

(2) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while participating in the Rockfish Program (see *rockfish halibut PSC* in this section).

* * * * *

Eligible rockfish entry level harvester means a person who is permitted by NMFS to harvest fish in the rockfish entry level fishery.

Eligible rockfish entry level processor means a person who is permitted by NMFS to receive and process fish harvested under the rockfish entry level fishery.

Eligible rockfish harvester means a person who is permitted by NMFS to hold rockfish QS.

Eligible rockfish processor means a person who is permitted by NMFS to receive and process primary rockfish species and secondary rockfish species harvested by a rockfish cooperative or in a rockfish limited access fishery.

* * * * *

Halibut PSC sideboard limit means the maximum amount of halibut PSC that may be used from July 1 through July 31 by eligible rockfish harvesters or rockfish cooperatives in the West Yakutat District, Central GOA, and Western GOA as established under § 679.82(d), as applicable.

* * * * *

Initial rockfish QS pool means the sum of rockfish QS units established for a Rockfish Program fishery based on the official Rockfish Program record and used for the initial allocation of rockfish QS units and use cap calculations as described in § 679.82(a).

* * * * *

Legal rockfish landing for purposes of qualifying for the Rockfish Program means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and

(1) *For catcher vessels:* (i) The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that Primary rockfish fishery as established in Table 28 to this part; and

(ii) An amount of halibut PSC attributed to that sector during the directed fishing season for the primary rockfish fisheries as established in Table 28 to this part.

(2) *For catcher/processors:* (i) The harvest of groundfish from the Central GOA regulatory area that is recorded on a Weekly Production Report based on harvests during the directed fishing season for that Primary rockfish fishery as established in Table 28 to this part; and

(ii) An amount of halibut PSC attributed that sector during the directed fishing season for the Primary rockfish fisheries as established in Table 28 to this part.

* * * * *

Non-allocated secondary species (see *Rockfish Program species* in this section).

* * * * *

Official Rockfish Program record means information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and

assign specific harvest or processing privileges to Rockfish Program participants.

* * * * *

Opt-out fishery means the fishery conducted by persons who are eligible rockfish harvesters holding an LLP license endorsed for catcher/processor activity and who are not participating in a rockfish cooperative or the rockfish limited access fishery in the catcher/processor sector.

* * * * *

Primary rockfish species (see *Rockfish Program species* in this section).

* * * * *

Rockfish cooperative means a group of eligible rockfish harvesters who have chosen to form a rockfish cooperative under the requirements of § 679.81(i) in order to combine and harvest fish collectively under a CFQ permit issued by NMFS.

Rockfish entry level fishery means the fishery conducted under the Rockfish Program by eligible rockfish entry level harvesters and eligible rockfish entry level processors.

Rockfish halibut PSC means the amount of halibut PSC that may be used by a rockfish cooperative in the Central GOA as assigned on a CFQ permit.

Rockfish limited access fishery means the fishery conducted by persons who are eligible rockfish harvesters or eligible rockfish processors and who are not participating in a rockfish cooperative or opt-out fishery for that applicable sector.

Rockfish Program means the Program authorized under the authority of Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) and implemented under subpart G of this part to manage Rockfish Program fisheries.

Rockfish Program fisheries means those directed fisheries that catch primary rockfish species, secondary species, rockfish halibut PSC, and rockfish sideboard fisheries.

Rockfish Program species means the following species in the Central GOA regulatory area that are managed under the authority of the Rockfish Program:

(1) *Primary rockfish species* means northern rockfish, Pacific ocean perch, and pelagic shelf rockfish.

(2) *Secondary species* means the following species:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

(iv) Rougheye rockfish for the catcher/processor sector; and

(v) Shortraker rockfish for the catcher/processor sector.

(3) *Non-allocated secondary species* means the following species:

(i) Atka mackerel, arrowtooth flounder, deep water flatfish, flathead sole, ''other species,'' pollock, rex sole, and shallow water flatfish;

(ii) Pacific cod for the catcher/processor sector; and

(iii) Rougheye rockfish and shortraker rockfish for the catcher vessel sector.

Rockfish Quota Share (QS) means a permit the amount of which is based on legal rockfish landings for purposes of qualifying for the Rockfish Program that are assigned to an LLP license.

Rockfish QS pool means the sum of rockfish QS units established for a Rockfish Program fishery based on the official Rockfish Program record.

Rockfish QS unit means a measure of QS based on the legal rockfish landings.

Rockfish sideboard fisheries means fisheries that are assigned a sideboard limit that may be harvested by participants in the Rockfish Program.

* * * * *

Secondary species (see *Rockfish Program species* in this section).

Sector for purposes of the Rockfish Program means: (1) Catcher/processor sector means those eligible rockfish harvesters who hold an LLP license with a catcher/processor designation and who are eligible to receive rockfish QS that may result in CFQ that may be harvested and processed at sea.

(2) *Catcher vessel sector* means those eligible rockfish harvesters who hold an LLP license who are eligible to receive rockfish QS that may result in CFQ that may not be harvested and processed at sea.

* * * * *

Sideboard limit for purposes of the Rockfish Program means: (1) The maximum amount of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish that may be harvested by all vessels in all areas as specified under § 679.82(d) through (h), as applicable;

(2) The maximum amount of Pacific cod that may be harvested by all vessels in all areas as specified under § 679.82(d) through (h), as applicable; or

(3) The maximum amount of halibut PSC that may be used by all vessels in all areas as specified under § 679.82(d) through (h), as applicable.

Sideboard ratio for purposes of the Rockfish Program means a portion of a sideboard limit for a groundfish fishery that is assigned to the catcher vessel sector or catcher/processor sector based on the catch history of vessels in that sector.

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program means a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another entity; or a third entity which directly or indirectly owns or controls a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

(1) *Entity.* An entity may be a person, association, partnership, joint-stock company, trust, or any other type of legal entity; any receiver, trustee in bankruptcy or similar official or liquidating agent; or any organized group of persons whether incorporated or not.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *Controls a 10 percent or greater interest.* An entity controls a 10 percent or greater interest in a second entity if the first entity:

(i) Controls a 10 percent ownership share of the second entity; or

(ii) Controls 10 percent or more of the voting or controlling stock of the second entity.

(4) *Otherwise controls.* An entity otherwise controls another entity, if it has:

(i) The right to direct, or does direct, the business of the other entity;

(ii) The right in the ordinary course of business to limit the actions of, or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity;

(iii) The right to direct, or does direct, the rockfish fishery processing activities of that entity;

(iv) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity through loan covenants;

(v) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of the entity, a significantly disproportionate amount of the economic benefit from the processing of fish by that entity;

(vi) The right to control, or does control, the management of, or to be a controlling factor in, the entity;

(vii) The right to cause, or does cause, the purchase or sale of fish processed by that entity;

(viii) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity; or

(ix) Has the ability through any other means whatsoever to control the entity.

* * * * *

3. In § 679.4, paragraphs (a)(1)(xii), (b)(10), (k)(11), and (n) are added to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see . . .
* * * * * * *		
(xii) Rockfish Program		
(A) CFQ	Specified fishing year	§ 679.81(e)(4).
(B) Rockfish Entry Level Fishery	Specified fishing year	§ 679.81(e)(7).
(C) Opt-out Fishery	Specified fishing year	§ 679.81(e)(6).
(D) Rockfish Limited Access Fishery	Specified fishing year	§ 679.81(e)(5).

* * * * *

(b) * * *

(10) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued to a vessel if that vessel was used to make any legal rockfish landings and is subject to a sideboard limit as described under § 679.82(d) through (h).

* * * * *

(k) * * *

(11) *Rockfish QS*—(i) *General.* In addition to other requirements of this part, a license holder must have rockfish QS on his or her groundfish LLP license to conduct directed fishing for Rockfish Program fisheries with trawl gear.

(ii) *Eligibility requirements for rockfish QS.* The eligibility requirements to receive rockfish QS are established in § 679.80(b).

* * * * *

(n) *Rockfish Program*—(1) *Cooperative fishing quota (CFQ).* (i) A CFQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CFQ as described at § 679.81(e)(4) that is subsequently approved by the Regional Administrator. A CFQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CFQ permit will indicate the amount of primary rockfish species or secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CFQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CFQ permit for that rockfish cooperative, and the eligible rockfish processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CFQ permit is valid under the following circumstances:

(A) Until the end of the year for which the CFQ permit is issued;

(B) Until the amount harvested is equal to the amount specified on the CFQ permit for a specific primary rockfish species or secondary species;

(C) Until the amount of halibut PSC used is equal to the amount of rockfish halibut PSC specified on the CFQ permit;

(D) Until the permit is modified by transfers under § 679.81(f);

(E) Until the permit is amended to add or remove vessels authorized to fish the CFQ for that rockfish cooperative;

(F) Until the permit is revoked through an approved rockfish cooperative termination of fishing declaration; or

(G) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the CFQ permit must be carried on board the vessel(s) used by the rockfish cooperative.

(2) *Rockfish cooperative termination of fishing declaration.* (i) A rockfish cooperative may choose to extinguish its CFQ permit through a declaration submitted to NMFS.

(ii) This declaration may only be submitted to NMFS using the following methods:

(A) Fax: 907–586–7354; or

(B) Hand Delivery or Carrier. NMFS, Room 713, 709 4th Street, Juneau, AK 99801.

(iii) A Rockfish cooperative termination of fishing declaration must include the following information:

(A) CFQ permit number;

(B) The date the declaration is submitted; and

(C) The rockfish cooperative's legal name, the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its authorized representative, and the printed name and signature of the authorized representative of the rockfish cooperative.

(iv) NMFS will review the declaration and notify the rockfish cooperative's authorized representative once the declaration has been approved.

(v) Upon approval of a declaration, the CFQ for all primary rockfish species, secondary species, and rockfish halibut PSC assigned to that rockfish cooperative will be set to zero and that rockfish cooperative may not receive any CFQ for any primary rockfish species, secondary species, and rockfish halibut PSC by transfer for that calendar year.

(3) *Eligible rockfish processor.* (i) The Regional Administrator will issue an eligible rockfish processor permit to persons who have submitted a complete application described at § 679.81(d), that is subsequently approved by the Regional Administrator. An eligible rockfish processor permit authorizes a shoreside processor or stationary floating processor to receive fish harvested under the Rockfish Program, except for fish harvested under the rockfish entry level fishery.

(ii) A permit is valid under the following circumstances:

(A) Until the permit is modified by transfers under § 679.81(f); or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or 15 CFR part 904.

(iii) A legible copy of the eligible rockfish processor permit must be available at the facility at which Rockfish Program fish are received.

4. Section 679.5 is amended by:

A. Removing and reserving paragraph (a)(4).

B. Redesignating paragraphs (e)(3) through (e)(7) as paragraphs (e)(4) through (e)(8), respectively.

C. Adding paragraphs (e)(3) and (r).

D. Revising the introductory text of paragraph (e) and paragraphs (e)(1) and (e)(2).

E. In newly redesignated paragraph (e)(4), remove the phrase ''paragraphs (e)(1) and (2)'' and add in its place the phrase ''paragraphs (e)(1), (e)(2), and (e)(3)''.

F. In newly redesignated paragraph (e)(5)(ii), remove the phrase ''paragraph (e)(6)'' and add in its place the phrase ''paragraph (e)(7)''.

G. In newly redesignated paragraph (e)(5)(iii), remove the phrase ''paragraph (e)(4)(iv)'' and add in its place the phrase ''paragraph (e)(5)(iv)''.

H. In newly redesignated paragraph (e)(5)(iii), remove the phrase ''paragraph (e)(4)(iv)'' and add in its place the phrase ''paragraph (e)(5)(iv)''.

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(e) *Shoreside processor electronic logbook report (SPELR).* The owner or manager of a shoreside processor or stationary floating processor:

(1) That receives groundfish from AFA catcher vessels or receives pollock harvested in a directed pollock fishery from catcher vessels:

(i) Must use SPELR or NMFS-approved software to report every delivery of harvest made during the fishing year, including but not limited to groundfish from AFA catcher vessels and pollock from a directed pollock fishery participant; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(2) That receives groundfish from catcher vessels that are permitted as harvesters in the Rockfish Program:

(i) Must use SPELR or NMFS-approved software to report every delivery of harvests made during the fishing year, including but not limited to groundfish from catcher vessels permitted as harvesters in the Rockfish Program; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(3) Receives groundfish and that is not required to use SPELR under paragraph (e)(1) or (e)(2) of this section:

(i) May use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(ii) If using SPELR, must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

* * * * *

(r) *Rockfish Program*—(1) *General.* The owners and operators of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors permitted as participants in the Rockfish Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a rockfish cooperative, rockfish limited access fishery, sideboard fishery, opt-out fishery, or rockfish entry level fishery as applicable at the time of catch or receipt of groundfish. All owners of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors permitted as participants in the Rockfish Program must ensure that their authorized representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook*—(i) *DFL.* Operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA participating in a Rockfish Program fishery must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

(ii) *DCPL.* Operators of catcher/processors permitted in the Rockfish Program must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Rockfish Program landings and production.

(3) *SPELR.* Managers of shoreside processors or SFPs that are permitted as processors in the Rockfish Program must use SPELR or NMFS-approved software as described in paragraphs (e) and (f) of this section, instead of a logbook and WPR, to record Rockfish Program landings and production.

(4) *Check-in/check-out report, processors.* Operators or managers of a catcher/processor, mothership, stationary processor, or stationary floating processor that are permitted as processors in the Rockfish Program must submit check-in/check-out reports as described in paragraph (h) of this section.

(5) *Weekly production report (WPR).* Operators of catcher/processors that are permitted as processors in the Rockfish Program and that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(6) *Product transfer report (PTR), processors.* Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section.

(7) *Rockfish cooperative catch report*—(i) *Applicability.* Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted to receive fish harvested under the Rockfish Program (see § 679.4(m)) must submit to the Regional Administrator a rockfish cooperative catch report detailing each cooperative's delivery and discard of fish, as described in paragraph (r)(7) of this section.

(ii) *Time limits and submittal.* (A) The rockfish cooperative catch report must be submitted by one of the following methods:

(*1*) An electronic data file in a format approved by NMFS mailed to: Sustainable Fisheries, P.O. Box 21668 Juneau, AK 99802–1668; or

(*2*) By fax: 907–586–7131.

(B) The rockfish cooperative catch report must be received by the Regional Administrator by 1200 hours, A.l.t. one week after the date of completion of delivery.

(iii) *Information required.* The rockfish cooperative catch report must contain the following information:

(A) CFQ Permit number;

(B) ADF&G vessel registration number(s) of vessel(s) delivering catch;

(C) Federal processor permit number of processor receiving catch;

(D) Date delivery completed;

(E) Amount of fish (in lb) delivered, plus weight of at-sea discards;

(F) ADF&G fish ticket number(s) issued to catcher vessel(s).

(8) *Annual rockfish cooperative report*—(i) *Applicability.* A rockfish cooperative permitted in the Rockfish Program (see § 679.4(m)(1)) annually must submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CFQ.

(ii) *Time limits and submittal.* (A) The annual rockfish cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format by fax: 907–586–7557; or by mail to the Regional Administrator, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668; and

(B) The annual rockfish cooperative report must be received by the Regional Administrator by December 15th of each year.

(iii) *Information required.* The annual rockfish cooperative report must include at a minimum:

(A) The cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the rockfish cooperative vessels on a vessel-by-vessel basis;

(B) The cooperative's actual retained and discarded catch of CFQ, and sideboard limit (if applicable) by statistical area and vessel-by-vessel basis;

(C) A description of the method used by the cooperative to monitor fisheries

in which cooperative vessels participated; and

(D) A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the rockfish cooperative agreement.

(9) *Vessel monitoring system (VMS) requirements* (see § 679.28(f))

5. In § 679.7, paragraph (n) is added as follows:

§ 679.7 Prohibitions.

* * * * *

(n) *Rockfish Program*—(1) *General.* (i) Fail to retain any primary rockfish species caught by a vessel named on an LLP license that is assigned to a rockfish cooperative when that vessel is fishing under a CFQ permit.

(ii) Fail to retain any primary rockfish species caught by a vessel named on an LLP license that is assigned to a rockfish limited access fishery, or to a rockfish entry level fishery, when that rockfish fishery is open.

(iii) Fail to retain any secondary species caught by a vessel named on an LLP that is assigned to a rockfish cooperative when that vessel is fishing under a CFQ permit.

(iv) Fail to retain any groundfish caught by a vessel that is subject to a sideboard limit as described at § 679.82(d) through (h), as applicable, if directed fishing for that groundfish species in that area is authorized.

(v) Use an LLP license assigned to a rockfish cooperative, limited access fishery, or opt-out fishery, or rockfish entry-level fishery in any other fishery other than the fishery to which that LLP license was initially assigned for that fishing year.

(2) *Vessels operators participating in the Rockfish Program.* (i) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish cooperative and fishing under a CFQ permit and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from May 1:

(A) Until November 15; or

(B) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(ii) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish limited access fishery and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

(iii) Operate a vessel that is subject to a sideboard limit detailed at § 679.82(d) through (w), as applicable, and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) *VMS.* (i) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish cooperative and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from May 1:

(A) Until November 15; or

(B) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(ii) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish limited access fishery and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

(iii) Operate a vessel that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1 until July 31.

(iv) Operate a vessel that is named on an LLP license that is assigned to the rockfish entry level fishery for trawl gear and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for the rockfish entry level fishery for trawl gear.

(4) *Catcher/processor vessels participating in the opt-out fishery.* Operate a vessel that is named on an LLP license that is assigned to the opt-out fishery to directed fish for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish in the Central GOA.

(5) *Shoreside and stationary floating processors eligible for the Rockfish Program*—(i) *Catch weighing.* Process any groundfish delivered by a vessel participating in a rockfish cooperative, rockfish limited access fishery, rockfish entry level fishery, or sideboard fishery not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(ii) *Catch monitoring and control plan (CMCP).* Take deliveries of, or process, groundfish caught by a vessel in a rockfish cooperative or the rockfish limited access fishery as detailed under this subpart without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained at the facility and made available to authorized officers or NMFS-authorized personnel upon request.

(iii) *Delivery location limitations.* Receive or process outside of the geographic boundaries of the community that is designated on the permit issued by NMFS to the eligible rockfish processor any groundfish caught by a vessel while that vessel is harvesting groundfish under a CFQ permit or in a rockfish limited access fishery.

(6) *Catcher vessels participating in the Rockfish Program and rockfish entry level fishery.* Deliver groundfish harvested by a catcher vessel fishing under a CFQ permit, in a rockfish limited access fishery, or in a rockfish entry level fishery to a shoreside or stationary floating processor that is not operating under an approved CMCP pursuant to § 679.28(g).

(7) *Rockfish cooperatives.* (i) Exceed the CFQ permit amount assigned to that rockfish cooperative for that Rockfish Program species.

(ii) Exceed the sideboard limit assigned to a rockfish cooperative in the catcher/processor sector.

(iii) Operate a vessel with an LLP license assigned to a rockfish cooperative to fish under a CFQ permit unless the operator of that vessel, or that rockfish cooperative's authorized representative has notified NMFS that the vessel is fishing under a CFQ permit in the application for CFQ or by amending that application by notification as described under § 679.81(e)(8).

(iv) Operate a vessel fishing under the authority of a CFQ permit and to have any Pacific ocean perch, pelagic shelf rockfish, northern rockfish, sablefish, thornyhead rockfish, aboard the vessel unless those fish were harvested under the authority of a CFQ permit.

(v) Operate a vessel fishing under the authority of a CFQ permit in the catcher vessel sector and to have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a CFQ permit.

(vi) Operate a vessel fishing under the authority of a CFQ permit in the catcher/processor sector and to have any

rougheye rockfish or shortraker rockfish aboard the vessel unless those fish were harvested under the authority of a CFQ permit.

(8) *Use caps.* Exceed the use caps that apply under § 679.82(a).

6. In § 679.20, paragraphs (e)(1), (e)(2)(ii), and (f)(2) are revised to read as follows:

§ 679.20 General Limitations.

* * * * *

(e) * * *

(1) *Proportion of basis species.* The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries) and in Table 11 to this part for the BSAI species categories.

(2) * * *

(ii) To obtain these individual retainable amounts, multiply the appropriate retainable percentage for the incidental catch species/basis species combination, set forth in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries), and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species. Only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ species. Only primary rockfish species fish harvested under the Rockfish Program may be used to calculate retainable amounts of other species, as provided in Table 30 to this part.

* * * * *

7. In § 679.28, paragraphs (f)(6), (g) introductory text, (g)(1) and (g)(2) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if the vessel is operating in any reporting area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal fisheries permit under § 679.4(b)(5)(vi), is open, or when that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3).

(g) *Catch monitoring and control plan requirements (CMCP)*—(1) *What is a CMCP?* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(7) of this section.

(2) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of shoreside or stationary floating processors receiving fish harvested in the following fisheries must prepare, submit, and have approved a CMCP prior to the receipt of fish harvested in these fisheries:

(i) AFA pollock,

(ii) AI directed pollock,

(iii) Rockfish Program.

* * * * *

8. In § 679.50, paragraphs (g)(1)(iii)(B) introductory text, and (g)(1)(iii)(B)(1) are revised and (c)(2)(vii), (c)(7), and (d)(7) are added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(2) * * *

(vii) *Rockfish Program.* In retained catch from Rockfish Program fisheries.

* * * * *

(7) *Rockfish Program*—(i) *Catcher/processor vessel*—(A) *Rockfish cooperative.* A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CFQ permit must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from May 1:

(*1*) Until November 15; or

(*2*) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(B) *Rockfish limited access fishery.* A catcher/processor vessel harvesting fish allocated to the rockfish limited access fishery for the catcher/processor sector must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from July 1:

(*1*) Until November 15; or

(*2*) Until NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher/processor sector.

(C) *Sideboard fishery.* A catcher/processor vessel that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process from July 1 until July 31.

(D) *Observer lead level 2 requirements.* At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(7)(i)(E) of this section would otherwise preclude sampling as required.

(E) *Observer workload.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period.

(ii) *Catcher vessels*—(A) *Rockfish cooperative.* A catcher vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CFQ permit must have aboard a NMFS-certified observer at all times the vessel is used to harvest fish in the Central GOA from May 1:

(*1*) Until November 15; or

(*2*) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(B) *Rockfish limited access fishery.* A catcher vessel harvesting fish allocated to the rockfish limited access fishery for the catcher vessel sector must have aboard a NMFS-certified observer aboard at all times the vessel is used to harvest in the Central GOA from July 1:

(*1*) Until November 15; or

(*2*) Until NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher vessel sector.

(C) *Sideboard fishery.* A catcher vessel that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas must have aboard a NMFS-certified observer at all times the vessel is used to harvest from July 1 until July 31.

(d) * * *

(7) *Rockfish Program*—(i) *Coverage level.* A shoreside or stationary floating processor must have a NMFS-certified observer for each 12 consecutive hour period in each calendar day during

which it receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section. A shoreside or stationary floating processor that receives deliveries or processes catch from a catcher vessel described at paragraph (c)(7)(ii) of this section for more than 12 consecutive hours in a calendar day is required to have two NMFS-certified observers each of these days.

(ii) *Multiple processors.* An observer deployed to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section harvested under the Rockfish Program fisheries may not be assigned to cover more than one processor during a calendar day.

(iii) *Observers transferring between vessels and processors.* An observer transferring from a catcher vessel delivering to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section may not be assigned to cover the shoreside or stationary floating processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is complete.

(iv) *Observer coverage limitations.* Observer coverage requirements at paragraph (d)(7) of this section are in addition to observer coverage requirements in other fisheries.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) or (c)(7)(ii) of this section:

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains: a full Pentium 120Mhz or greater capacity processing chip, at least 256 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 98 (or more recent) compatible operating system, an operating mouse, a 3.5-inch (8.9 cm) floppy disk drive, and a readable CD ROM disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8cm) and minimum display settings of 600 x 800 pixels. Except for a catcher vessel described at paragraph (c)(7)(ii) of this section, the computer equipment specified in paragraph (g)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8 kbs Hayes-compatible modem.

* * * * *

9. Subpart G, consisting of §§ 679.80 through 679.84, is added to read as follows:

Subpart G—Rockfish Program

Sec.

Subpart G—Rockfish Program

§ 679.80 Initial allocation of rockfish QS.

Regulations under this subpart were developed by National Marine Fisheries Service to implement Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). Additional regulations that implement specific portions of the Rockfish Program are set out at: § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting, § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.28 Equipment and operational requirements, and § 679.50 Groundfish Observer Program.

(a) *Applicable areas and duration*—(1) *Applicable areas.* The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area and rockfish sideboard fisheries in the GOA and BSAI.

(2) *Duration.* The Rockfish Program authorized under this part expires on December 31, 2008.

(3) *Seasons.* The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) *Rockfish entry level fishery—fixed gear vessels.* Fishing by vessels participating in the fixed gear portion of the rockfish entry level fishery is authorized from 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., November 15.

(ii) *Rockfish entry level fishery—trawl vessels.* Fishing by vessels participating in the trawl gear portion of the rockfish entry level fishery is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(iii) *Rockfish cooperative.* Fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(iv) *Rockfish Program fishery—rockfish limited access fishery.* Fishing by vessels participating in the rockfish limited access fishery is authorized from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t., November 15.

(b) *Eligibility for harvesters to participate in the Rockfish Program*—(1) *Eligible rockfish harvester.* A person is eligible to participate in the Rockfish Program as an eligible rockfish harvester if that person:

(i) Holds a permanent fully transferrable LLP license at the time of application to participate in the Rockfish Program that:

(A) Is endorsed for Central GOA groundfish with a trawl gear designation; and

(B) Has a legal rockfish landing of any primary rockfish species in a directed fishery for any primary rockfish species assigned to that LLP license; and

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS.

(2) *Eligible entry-level fishery harvester.* A person is eligible to participate in the Rockfish Program as an eligible entry-level fishery harvester if that person:

(i) Holds a valid LLP license endorsed for Central GOA groundfish at the time of application for the entry-level fishery;

(ii) Submits a timely application for the entry-level fishery that is approved by NMFS; and

(iii) That person does not hold a permanent fully transferrable LLP license endorsed for Central GOA groundfish with a trawl designation and with a legal rockfish landing of any primary rockfish species in a directed fishery assigned to that LLP license.

(3) *Assigning a legal rockfish landing to an LLP license.* A legal rockfish landing is assigned to an LLP license endorsed for the Central GOA management area with a trawl gear designation, if that legal rockfish landing was made aboard a vessel that gave rise to that LLP license prior to the issuance of that LLP license, or that legal rockfish landing was made on a vessel using trawl gear operating under the authority of that LLP license.

(4) *Legal rockfish landings assigned to the catcher/processor sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher/processor sector if:

(i) The legal rockfish landing of that primary rockfish species was harvested and processed aboard a vessel during the season dates for that primary rockfish species as established in Table 28 to this part; and

(ii) The legal rockfish landings that were derived from that vessel resulted in, or were made under the authority of, an LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear with a catcher/processor designation.

(5) *Legal rockfish landings assigned to the catcher vessel sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher vessel sector if:

(i) The legal rockfish landing of that primary rockfish species was harvested and not processed aboard a vessel during the season dates for that primary rockfish species as established under Table 28 to this part; and

(ii) The legal rockfish landings that were derived from that vessel resulted in, or were made under the authority of, an LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear that does not meet the criteria for being a legal rockfish landing assigned to the catcher/processor sector as defined in paragraph (b)(4) of this section.

(c) *Eligibility for processors to participate in the Rockfish Program*—(1) *Eligible rockfish processor.* A person is eligible to participate in the Rockfish Program as an eligible rockfish processor if that person:

(i) Holds the processing history of a shoreside processor or stationary floating processor that received not less than 250 metric tons in round weight equivalents of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS; and

(iii) That person or his successor-in-interest exists at the time of application to participate in the Rockfish Program.

(2) *Holder of processing history.* A person holds the processing history of a shoreside processor or stationary floating processor if that person:

(i) Owns the shoreside processor or stationary floating processor at which the legal rockfish landings were received at the time of application to participate in the Rockfish Program, unless that processing history has been transferred to another person by the express terms of a written contract that clearly and unambiguously provides that such processing history has been transferred; or

(ii) Holds the processing history by the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person.

(3) *Eligible entry-level fishery processor.* A person is eligible to participate in the Rockfish Program as an eligible entry-level fishery processor if that person is not an eligible rockfish processor.

(d) *Official Rockfish Program record*—(1) *Use of the official Rockfish Program record.* The official Rockfish Program record will contain information used by the Regional Administrator to determine:

(i) The amount of legal rockfish landings and resulting processing history assigned to a shoreside processor or stationary floating processor;

(ii) The amount of legal rockfish landings assigned to an LLP license;

(iii) The amount of rockfish QS resulting from legal rockfish landings assigned to an LLP license held by an eligible rockfish harvester;

(iv) Sideboard ratios assigned to eligible rockfish harvesters;

(v) The amount of legal rockfish landings assigned to an eligible rockfish processor for purposes of establishing a rockfish cooperative with eligible rockfish harvesters; and includes:

(vi) All other information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest or processing privileges to Rockfish Program participants.

(2) *Presumption of correctness.* The official Rockfish Program record is presumed to be correct. An applicant to participate in the Rockfish Program has the burden to prove otherwise. For the purposes of creating the official Rockfish Program record, the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used aboard the same vessel from which that LLP license is derived during the calendar years 2000 and 2001, unless written documentation is provided that establishes otherwise.

(ii) If more than one person is claiming the same legal rockfish landing, then each LLP license for which the legal rockfish landing is being claimed will receive an equal share of any resulting rockfish QS unless the applicants can provide written documentation that establishes an alternative means for distributing the catch history to the LLP licenses.

(3) *Documentation.* (i) Only legal rockfish landings, as defined in § 679.2, shall be used to establish an allocation of rockfish QS or a sideboard ratio.

(ii) Evidence of legal rockfish landings used to establish processing history for an eligible rockfish processor is limited to State of Alaska fish tickets.

(4) *Non-severability of legal rockfish landings.* Legal rockfish landings are non-severable:

(i) From the LLP license to which those legal rockfish landings are assigned according to the official Rockfish Program record;

(ii) From the shoreside processor or stationary floating processor at which the legal rockfish landings were received unless the processing history assigned to that shoreside processor or stationary floating processor is transferred, in its entirety, to another person by the express terms of a written contract that clearly and unambiguously provides that such processing history has been transferred.

(e) *Application to participate in the Rockfish Program*—(1) *Submission of application to participate in the Rockfish Program.* A person who wishes to participate in the Rockfish Program as an eligible rockfish harvester or eligible rockfish processor must submit a timely and complete application to participate in the Rockfish Program. This application may only be submitted to NMFS using the following methods:

(i) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) Fax: 907–586–7354; or

(iii) Hand Delivery or Carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application to participate in the Rockfish Program must be received by NMFS no later than 1700 hours A.l.t. on December 1, 2006, or if sent by U.S. mail, postmarked by that time.

(4) *Contents of application.* A completed application must contain the following information:

(i) *Applicant identification.* (A) The applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, and business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) For an applicant claiming legal rockfish landings associated with an LLP license enter the following information for each LLP license: LLP license number, name of the original qualifying vessel(s) (OQV(s)) that gave rise to the LLP license, ADF&G vessel registration number of the OQV, and names, ADF&G vessel registration numbers, and USCG documentation numbers of all other vessels used under the authority of this LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

(F) For an applicant claiming legal rockfish landings in the catcher/processor sector enter the following information: LLP license numbers, vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of vessels on which legal rockfish landings were caught and processed.

(ii) *Processor eligibility*. (A) Indicate (YES or NO) if the applicant received at least 250 metric tons in round weight equivalent of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(B) If the answer to paragraph (e)(4)(ii)(A) of this section is YES, enter the facility name and ADF&G processor code(s) for each processing facility where legal rockfish landings were received and the qualifying years or seasons for which applicant is claiming eligibility.

(C) Enter the name of the community in which the primary rockfish species were received. The community is either:

(*1*) The city, if the community is incorporated as a city within the State of Alaska;

(*2*) The borough, if the community is not a city incorporated within the State of Alaska, but the community is in a borough incorporated within the State of Alaska.

(D) Enter the four calendar years from 1996 through 2000 that NMFS will use to determine the percentage of legal rockfish landings received by that eligible rockfish processor for purposes of forming an association with a rockfish cooperative.

(E) Submit a copy of the contract that the legal processing history and rights to apply for and receive processor eligibility based on that legal processing history have been transferred or retained (if applicable); and

(F) Any other information deemed necessary by the Regional Administrator.

(iii) *Applicant signature and certification*. The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(5) *Application evaluation*. The Regional Administrator will evaluate applications received as specified in paragraph (e)(3) of this section and compare all claims in an application with the information in the official Rockfish Program record. Application claims that are consistent with information in the official Rockfish Program record will be accepted by the Regional Administrator. Application claims that are inconsistent with official Rockfish program record, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (e)(4) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official Rockfish Program record. An applicant who submits claims that are inconsistent with information in the official Rockfish Program record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an IAD of his or her appeal rights under § 679.43.

(6) *Appeals*. If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(f) *Rockfish QS allocation*—(1) *General*. An eligible rockfish harvester who holds an LLP license at the time of application to participate in the Rockfish Pilot Program will receive rockfish QS assigned to that LLP license based on the legal rockfish landings assigned to that LLP license according to the official Rockfish Program record.

(2) *Non-severability of rockfish QS from an LLP license*. Rockfish QS assigned to an LLP license is non-severable from that LLP license.

(3) *Calculation of rockfish QS.* (i) Based on the official Rockfish Program record, the Regional Administrator shall determine the total amount of legal rockfish landings of each primary rockfish species in each year during the fishery seasons established in Table 28 to this part.

(ii) Rockfish QS for each primary rockfish species shall be based on a percentage of the legal rockfish landings of each primary rockfish species in that sector associated with each fully transferrable LLP license held by the eligible rockfish harvester.

(iii) The Regional Administrator shall calculate rockfish QS for each primary rockfish species ''s'' based on each fully transferable LLP license ''l'' held by an eligible rockfish harvester by the following procedure:

(A) Sum the legal rockfish landings for each year during the fishery seasons established in Table 28 to this part.

(B) Select the five years that yield the highest poundage of that primary rockfish species, including zero pounds if necessary.

(C) Sum the poundage of the highest five years, for that species for that LLP license as selected under paragraph (f)(3)(iii)(B) of this section. This yields the Highest Five Years.

(D) Divide the Highest Five Years in paragraph (f)(3)(iii)(C) of this section for an LLP license and species by the sum of all Highest Five Years based on the official Rockfish Program record for that species as presented in the following equation:

$$\text{Highest Five Years}_{ls} / \Sigma \text{ All Highest Five Years}_{s} = \text{Percentage of the Total}_{ls}$$

The result (quotient) of this equation is the Percentage of the Total_{ls}.

(E) Multiply the Percentage of the Total_{ls} of the Total by the Initial Rockfish QS Pool for each relevant species as established in Table 29 to this part. This yields the number of rockfish QS units for that LLP license for that primary rockfish species in rockfish QS units.

(F) Determine the percentage of legal rockfish landings in the five qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For

each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector is the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.

(G) Determine the percentage of legal rockfish landings in the five qualifying years used to calculate rockfish QS that are assigned to the catcher vessel sector and multiply the amount calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher vessel sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher vessel sector is equal to the sum of all rockfish QS units assigned to all eligible rockfish harvesters in the catcher vessel sector.

§ 679.81 Rockfish Program annual harvester and processor privileges.

(a) *Sector and LLP license allocations of primary rockfish species*—(1) *General.* Each calendar year, the Regional Administrator will determine the poundage of primary rockfish species that will be assigned to the Rockfish Program. For participants in a rockfish cooperative, rockfish limited access fishery, or opt-out fishery, amounts will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The poundage of fish assigned to a sector will be further assigned to rockfish cooperative(s) or the rockfish limited access fishery within that sector.

(2) *Calculation.* The amount of primary rockfish species allocated to the Rockfish Program is calculated by deducting the incidental catch allowance (ICA) the Regional Administrator determines is required on an annual basis in other non-target fisheries from the TAC. Ninety-five (95) percent of the remaining TAC for that primary rockfish species (TAC_s) is assigned for use by rockfish cooperatives and the rockfish limited access fishery in the catcher vessel and catcher/processor sectors. Five (5) percent of the remaining TAC is allocated for use in the rockfish entry level fishery. The formulae are as follows in paragraphs (g)(2)(i) and (ii) of this section:

(i) $(TAC - ICA) \times 0.95 = TAC_s$.

(ii) $(TAC - ICA) \times 0.05$ = TAC for the Rockfish Entry Level Fishery.

(3) *Primary rockfish species TAC_s assigned to the catcher/processor and catcher vessel sector.* TAC_s assigned for a primary rockfish species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive an amount of TAC_s for each primary rockfish species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that primary rockfish fishery in that sector. Expressed algebraically for each primary rockfish species ''s'' in paragraphs (g)(3)(i) and (ii) of this section:

(i) Catcher/Processor Sector TAC_s = $[(TAC_s) \times (\text{Rockfish QS Units in the Catcher/Processor Sector}_s / \text{Rockfish QS Pool}_s)]$.

(ii) Catcher Vessel Sector TAC_s = $[(TAC_s) \times (\text{Rockfish QS Units in the Catcher Vessel Sector}_s / \text{Rockfish QS Pool}_s)]$.

(4) *Use of primary rockfish species by an eligible rockfish harvester.* Once a TAC_s is assigned to a sector, the use of that TAC_s by eligible rockfish harvesters in that sector is governed by regulations applicable to the rockfish cooperative, limited access fishery, or opt-out fishery in which those eligible rockfish harvesters are participating. The TAC_s is assigned as follows:

(i) Any TAC_s assigned to a rockfish cooperative is issued as CFQ and may be harvested only by the members of the rockfish cooperative that has been assigned that CFQ and only on vessels that are authorized to fish under that CFQ permit. Once issued, CFQ may be transferred among rockfish cooperatives within a sector according to the provisions in paragraph (f) of this section.

(ii) Any TAC_s assigned to the rockfish limited access fishery in the catcher vessel sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher vessel sector.

(iii) Any TAC_s assigned to the rockfish limited access fishery in the catcher/processor sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher/processor sector.

(iv) TAC_s is not assigned to an opt-out fishery. Any TAC_s that would have been derived from rockfish QS assigned to the opt-out fishery is reassigned to rockfish cooperatives and the rockfish limited access fishery in the catcher/processor sector as established in paragraph (a)(5)(ii) of this section.

(5) *Determining the TAC_s of primary rockfish species.* TAC_s is assigned to each rockfish cooperative or limited access fishery based on the rockfish QS assigned to that fishery in each sector according to the following procedures for the catcher vessel sector and the catcher/processor sector:

(i) *Catcher vessel sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is governed by the rockfish fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS pool in the catcher vessel sector multiplied by the catcher vessel TAC_s. Once TAC_s for a primary rockfish species is assigned to a rockfish cooperative, it is issued as CFQ specific to that rockfish cooperative. The amount of CFQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CFQ = $[(\text{Catcher Vessel Sector } TAC_s) \times (\text{Rockfish QS assigned to that Cooperative/Rockfish QS Units in the Catcher Vessel Sector}_s)]$.

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the rockfish limited access fishery is equal to the catcher vessel sector TAC_s subtracting all CFQ issued to rockfish cooperatives in the catcher vessel sector for that primary rockfish species. Expressed algebraically in the following equation:

Catcher Vessel Sector Rockfish Limited Access Fishery TAC_s = Catcher Vessel Sector TAC_s—(Σ CFQ issued to Rockfish Cooperatives in the Catcher Vessel Sector).

(ii) *Catcher/processor sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is determined by the rockfish fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperatives divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery in the catcher/processor sector multiplied by the catcher/processor TAC_s. Once TAC_s for a primary rockfish species is assigned to a rockfish cooperative it is issued as CFQ specific to that rockfish cooperative. The amount of CFQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CFQ = $[(\text{Catcher/Processor Sector } TAC_s) \times (\text{Rockfish QS Units assigned to that Cooperative}/\Sigma\text{Rockfish QS Units assigned to all rockfish}$

cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the limited access fishery is equal to the catcher/processor TAC_s subtracting all CFQ issued to rockfish cooperatives in the catcher/processor sector for that primary rockfish species. Expressed algebraically in the following equation:

Catcher/Processor Sector Rockfish Limited Access Fishery TAC_s = [(Catcher/Processor Sector TAC_s)—(**Σ** CFQ issued to rockfish cooperatives in the Catcher/Processor Sector).

(b) *Sector and LLP license allocations of secondary species*—(1) *General.* Each calendar year, the Regional Administrator will determine the poundage of secondary species that may be assigned to the Rockfish Program. This amount will be assigned to either the catcher/processor sector or the catcher vessel sector. The poundage of fish assigned to a sector will be assigned to rockfish cooperatives within that sector. CFQ of secondary species is subject to the use limitations established in paragraph (b)(4) of this section.

(2) *Maximum amount of secondary species poundage that may be assigned to the catcher/processor sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher/processor designation or that fished under an LLP license with a catcher/processor designation during the directed fishery for any Primary rockfish fishery during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher/processor sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher/processor sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of secondary species that may be assigned to the catcher/processor sector in the rockfish fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher/processor sector in the rockfish fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program.

(v) The maximum of rougheye rockfish that may be allocated to the catcher/processor sector is equal to 58.87 percent of the TAC for the Central GOA.

(vi) The maximum amount of shortraker rockfish that may be allocated to the catcher/processor sector is equal to 30.03 percent of the TAC for the Central GOA.

(3) *Maximum amount of secondary species poundage that may be assigned to the catcher vessel sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher vessel designation or that fished under an LLP license with a catcher vessel designation during the directed fishery for any primary rockfish fishery during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher vessel sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher vessel sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of each secondary species that may be assigned to the catcher vessel sector in the rockfish fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher vessel sector in the rockfish fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program.

(4) *Use of a secondary species by an eligible rockfish harvester.* Once the maximum amount of secondary species that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by regulations applicable to the specific rockfish fishery in which eligible rockfish harvesters are participating. The specific amount of each secondary species that may be used by eligible rockfish harvesters is determined by the following procedure:

(i) Secondary species may only be assigned to a rockfish cooperative. Once a secondary species is assigned to a rockfish cooperative it is issued as CFQ, which may only be used by the rockfish cooperative to which it is assigned.

(ii) Secondary species are not assigned to a rockfish limited access fishery or the opt-out fishery and there is not a dedicated harvestable allocation for any specific participant in these rockfish fisheries.

(5) *Determining the amount of secondary species CFQ assigned to a rockfish cooperative.* The amount of CFQ for each secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CFQ assigned to rockfish cooperatives in the catcher/processor sector.* The CFQ for a secondary species that is assigned to a rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CFQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher/Processor Sector in the Rockfish Program × (**Σ**Rockfish QS Units assigned to that Rockfish cooperative/Rockfish QS Pool in the Catcher/Processor Sector).

(ii) *CFQ assigned to rockfish cooperatives in the catcher vessel sector.* The CFQ for a secondary species that is assigned to a specific rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector. Expressed algebraically in the following equation:

CFQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher Vessel Sector in the Rockfish Program × (**Σ**Rockfish QS Units assigned to that Rockfish Cooperative / Rockfish QS Pool in the Catcher Vessel Sector).

(c) *Sector and LLP license allocations of rockfish halibut PSC*—(1) *General.* Each calendar year, the Regional Administrator will determine the poundage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated

to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The poundage of rockfish halibut PSC assigned to a sector will be further assigned as CFQ only to rockfish cooperative(s) within that sector. CFQ of rockfish halibut PSC is subject to the use limitations established in § 679.82(a) of this section.

(2) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher/processor sector.* (i) Sum the amount of halibut PSC used by all vessels that gave rise to an LLP license with a catcher/processor designation or that fished under an LLP license with a catcher/processor designation during the directed fishery for any primary rockfish fishery during all qualifying season dates established in Table 28 to this part. This is the catcher/processor sector rockfish halibut PSC amount.

(ii) Sum the amount of halibut PSC by all vessels in the Central GOA Regulatory Area and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from January 1, 1996, until December 31, 2002. This is the Total Halibut PSC.

(iii) Divide the catcher/processor sector rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the catcher/processor sector in the rockfish fishery.

(iv) Multiply the percentage of rockfish halibut PSC assigned to the catcher/processor sector in the rockfish fishery by the GOA halibut PSC limit. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector.

(3) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher vessel sector.* (i) Sum the amount of halibut PSC used by all vessels that gave rise to an LLP license with a catcher vessel designation or that fished under an LLP license with a catcher vessel designation during the directed fishery for any primary rockfish fishery during all qualifying season dates established in Table 28 to this part. This is the catcher vessel sector rockfish halibut PSC amount.

(ii) Sum the amount of halibut PSC by all vessels in the Central GOA Regulatory Area and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from January 1, 1996, until December 31, 2002. This is the Total Halibut PSC.

(iii) Divide the catcher vessel sector rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the catcher vessel sector in the rockfish fishery.

(iv) Multiply the percentage of rockfish halibut PSC assigned to the catcher vessel sector in the rockfish fishery by the GOA halibut PSC limit. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector.

(4) *Use of rockfish halibut PSC by an eligible rockfish harvester.* Once the maximum amount of rockfish halibut PSC that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by the specific rockfish fishery in which eligible rockfish harvesters are participating. The specific amount of rockfish halibut PSC that may be used by eligible rockfish harvesters is determined by the following procedure:

(i) *Rockfish halibut PSC is assigned only to a rockfish cooperative.* Once rockfish halibut PSC is assigned to a rockfish cooperative, it is issued as CFQ, which may only be used by the members of the rockfish cooperative to which it is assigned.

(ii) Rockfish halibut PSC is not assigned to a rockfish limited access fishery or the opt-out fishery and there is not a dedicated allocation for any specific participant in these rockfish fisheries.

(5) *Determining the amount of rockfish halibut PSC CFQ assigned to a rockfish cooperative.* The amount of CFQ of rockfish halibut PSC that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CFQ assigned to rockfish cooperatives in the catcher/processor sector.* The CFQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CFQ for Rockfish Halibut PSC = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher/Processor Sector x (**Σ**Rockfish QS Units assigned to that Rockfish Cooperative/Rockfish QS Pool in the Catcher/Processor Sector).

(ii) *CFQ assigned to rockfish cooperatives in the catcher vessel sector.* The CFQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector. Expressed algebraically in the following equation:

CFQ for Rockfish Halibut PSC = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher Vessel Sector x (**Σ**Rockfish QS Units assigned to that Rockfish Cooperative/Rockfish QS Pool in the Catcher Vessel Sector).

(d) *Assigning rockfish QS to a Rockfish Program fishery*—(1) *General.* Each calendar year, a person that is participating in the Rockfish Program must assign any LLP license and any rockfish QS assigned to that LLP license to a Rockfish Program fishery by the process specified in paragraph (e) of this section. A person may assign an LLP license and any rockfish QS assigned to that LLP license to only one Rockfish Program fishery in a fishing year. Any rockfish QS assigned to a person after NMFS has issued CFQ or the TAC for that calendar year will not result in any additional CFQ or TAC being issued for that rockfish QS for that calendar year.

(2) *Rockfish cooperatives in the catcher vessel sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher vessel sector if:

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CFQ that is approved by the Regional Administrator; and

(ii) That rockfish QS is associated with an LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(3) *Rockfish cooperative in the catcher/processor sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher/processor sector if:

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CFQ that is approved by the Regional Administrator; and

(ii) That rockfish QS is associated with an LLP license with a catcher/processor designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(4) *Rockfish limited access fishery.* (i) An eligible rockfish harvester may assign rockfish QS to a rockfish limited access fishery if that eligible rockfish harvester:

(A) Assigns the rockfish QS associated with that LLP license to a limited access fishery on a complete application for the rockfish limited access fishery that is approved by the Regional Administrator; or

(B) Does not submit a complete application for CFQ, or application for the opt-out fishery that is approved.

(ii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher vessel sector if that rockfish QS is associated with an LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(iii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher/processor sector if that rockfish QS is associated with an LLP license with a catcher/processor designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(5) *Opt-out fishery.* An eligible rockfish harvester may assign rockfish QS to the opt-out fishery if that eligible rockfish harvester assigns the rockfish QS associated with that LLP license to the opt-out fishery on a complete application for the opt-out fishery that is approved by the Regional Administrator.

(6) *Rockfish entry level fishery.* (i) An eligible rockfish entry level harvester may assign an LLP license to the rockfish entry level fishery if that eligible rockfish entry level harvester assigns that LLP license to the rockfish entry level fishery on a complete application for the rockfish entry level fishery that is approved by the Regional Administrator.

(ii) An eligible rockfish entry level processor may participate in the rockfish entry level fishery if that eligible rockfish entry level processor submits a complete application for the rockfish entry level fishery that is approved by the Regional Administrator.

(e) *Applications for a rockfish fishery*—(1) *General.* Applications to participate in a rockfish fishery are required to be submitted each year. A person who wishes to participate in a particular rockfish fishery must submit a timely and complete application that is appropriate to that rockfish fishery. These applications may only be submitted to NMFS using the following methods:

(i) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) Fax: 907–586–7354; or

(iii) Hand Delivery or Carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at: 800–304–4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on December 1 of the year prior to the year for which the applicant wishes to participate in a rockfish fishery, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CFQ.* A rockfish cooperative that submits a complete application that is approved by NMFS will receive a CFQ permit that establishes an annual amount of primary rockfish species, secondary species, and rockfish halibut PSC that is based on the collective rockfish QS of the LLP licenses assigned to the rockfish cooperative by its members. A CFQ permit will list the amount of CFQ, by fishery, held by the rockfish cooperative, the members of the rockfish cooperative and LLP licenses assigned to that rockfish cooperative, and the vessels which are authorized to harvest fish under a CFQ permit.

(i) *Contents of an application for CFQ.* A completed application must contain the following information:

(A) *Rockfish cooperative identification.* The rockfish cooperative's legal name; the type of business entity under which the rockfish cooperative is organized; the state in which the rockfish cooperative is legally registered as a business entity; the printed name of the rockfish cooperative's authorized representative; the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its authorized representative; and the signature of the rockfish cooperative's authorized representative and date signed.

(B) *Members of the rockfish cooperative*—(*1*) *Harvester identification.* Full name; NMFS Person ID; LLP license number(s); name of the vessel(s), ADF&G vessel registration number, and USCG documentation number of vessel(s) on which the CFQ issued to the rockfish cooperative will be used. If no vessel(s) are designated to use the CFQ issued to the rockfish cooperative on the application, then all vessels using LLP license assigned to the rockfish cooperative will be assumed to be designated to use the CFQ.

(*2*) *LLP holdership documentation.* Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license(s) assigned to the rockfish cooperative and the percentage ownership each person and individual holds in the LLP license(s).

(C) *Processor associates of the rockfish cooperative*—(*1*) *Identification.* Full name; NMFS Person ID; facility name; ADF&G processor code; SFP vessel name, ADF&G vessel registration number, and USCG documentation number of vessel (if a vessel), and Federal Processor Permit for each processing facility or vessel.

(*2*) *Processor ownership documentation.* Provide the names of all persons, to the individual person level, holding an ownership interest in the processor and the percentage ownership each person and individual holds in the processor.

(D) *Additional documentation.* For the cooperative application to be considered complete, the following documents must be attached to the application:

(*1*) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(*2*) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

(*3*) A copy of the rockfish cooperative agreement signed by the members of the rockfish cooperative (if different from the articles of incorporation or partnership agreement of the rockfish cooperative); and

(*4*) Any article of incorporation or agreement submitted by the rockfish cooperative must include terms that specify that:

(*i*) Eligible rockfish processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law; and

(*ii*) The rockfish cooperative must establish a monitoring program sufficient to ensure compliance with the Rockfish Program.

(E) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Issuance of CFQ.* Issuance by NMFS of a CFQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

(5) *Application for the rockfish limited access fishery.* An eligible rockfish harvester who wishes to participate in the rockfish limited access fishery for a calendar year must submit

an application for the rockfish limited access fishery.

(i) *Contents of application for the rockfish limited access fishery.* A completed application must contain the following information:

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is participating in the rockfish limited access fishery;

(D) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel in this rockfish limited access fishery;

(E) *LLP holdership documentation.* Provide the names of all persons, to the individual person level, holding an ownership interest in the LLP license assigned to the rockfish limited access fishery and the percentage ownership each person and individual holds in the LLP license; and

(F) The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(6) *Application to opt-out.* An eligible rockfish harvester who wishes to opt-out of the Rockfish Program for a calendar year with an LLP license assigned rockfish QS in the catcher/processor sector must submit an application to opt-out.

(i) *Contents of application to opt-out.* A completed application must contain the following information:

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is opting-out of the Rockfish Program;

(D) Indicate (YES or NO) whether the applicant holds an LLP license with rockfish QS assigned to the catcher/processor sector;

(E) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel;

(F) *LLP holdership documentation.* Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license; and

(G) The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(7) *Application for the entry-level fishery.* An eligible entry level harvester who wishes to participate in the entry-level fishery must submit an application for the entry-level fishery.

(i) Contents of application for the entry-level fishery. A completed application must contain the following information:

(A) *Applicant information.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, and business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether applicant is a U.S. corporation, partnership; association, or other business entity; if YES, enter the date of incorporation;

(C) *Vessel identification.* For harvesters who are applying to participate in the entry-level fishery, enter the name, ADF&G vessel registration number, and USCG documentation number of the vessel to be used in the entry-level fishery, and LLP license number(s) held by the applicant and used on that vessel in the rockfish entry level fishery;

(D) Harvesters who are applying to participate in the entry-level fishery must attach a statement from an eligible entry level processor that affirms that the harvester has a market for any rockfish delivered by that harvester in the entry-level fishery; and

(E) The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(8) *Modification of vessels authorized to fish CFQ.* (i) The authorized representative of a rockfish cooperative must notify NMFS of any change in the vessel(s) that are authorized to fish CFQ for that rockfish cooperative from those indicated in the application for CFQ. This notification must be made on an amended application for CFQ. This amended application for CFQ would request that NMFS add or remove vessels authorized to fish CFQ for that rockfish cooperative. Such a change does not take effect until it is approved by NMFS through the issuance of a revised CFQ permit.

(ii) This amended application for CFQ may be submitted at any time after the initial issuance of CFQ to that rockfish cooperative for that calendar year until:

(A) November 15; or

(B) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(iii) This modification to the application for CFQ may only be submitted to NMFS using the following methods:

(A) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(B) Fax: 907–586–7354; or

(C) Hand Delivery or Carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(f) *Transfer applications.* A rockfish cooperative may transfer all or part of its CFQ to another rockfish cooperative. This transfer requires the submission of an application for inter-cooperative transfer to NMFS. An eligible rockfish processor may transfer its eligible rockfish processor permit. This transfer requires the submission to NMFS of an application to transfer an processor eligibility.

(1) *Application for inter-cooperative transfer.* NMFS will notify the transferor and transferee once the application has been received and approved. A transfer of CFQ is not effective until approved by NMFS. A completed transfer of CFQ issued to a rockfish cooperative requires that the following information be provided to NMFS in the application for inter-cooperative transfer:

(i) *Identification of transferor.* Enter the name; NMFS Person ID; name of rockfish cooperative's authorized representative; permanent business mailing address; and business telephone number, fax number, and e-mail address

(if available) of the rockfish cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* (A) Enter the name; NMFS Person ID; name of rockfish cooperative's authorized representative; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the rockfish cooperative transferee. A temporary mailing address for each transaction may also be provided.

(B) Provide the names of all persons, to the individual person level, holding a holdership interest in the LLP license(s) and the percentage ownership each person holds in each LLP license.

(iii) *Identification of rockfish cooperative member.* Enter the name and NMFS Person ID of the member(s) to whose use cap the rockfish cooperative CFQ will be applied, and the amount of CFQ applied to each member for purposes of applying use caps established under the Rockfish Program under § 679.82(a).

(iv) *CFQ to be transferred.* Identify the type and amount of Primary species, secondary species, or rockfish halibut PSC CFQ to be transferred.

(v) *Certification of transferor.* The rockfish cooperative transferor's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Also enter the printed name of the rockfish cooperative transferor's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(vi) *Certification of transferee.* The rockfish cooperative transferee's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Also enter the printed name of the rockfish cooperative transferee's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(2) *Application to transfer processor eligibility.* NMFS will notify the transferor and transferee once the application has been received and approved. A transfer is not effective until approved by NMFS. A completed transfer of processor eligibility requires that the following information be provided to NMFS in the application to transfer processor eligibility:

(i) *Identification of transferor.* Enter the name; NMFS Person ID; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available). A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address. Enter the facility name of SFP, ADF&G processor code, and FPP for each processing facility for which that processor eligibility applies. Enter the name of the community in which that processor eligibility applies.

(ii) *Identification of transferee.* Enter the name; NMFS Person ID; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the transferee. A temporary mailing address for each transaction may also be provided. Enter the facility name or SFP, ADF&G processor code, and FPP for each processing facility where that processor eligibility will apply. Enter the name of the community in which that processor eligibility will be used.

(iii) *Certification of transferor.* The processor eligibility transferor's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Also enter the printed name of the processor eligibility transferor's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(iv) *Certification of transferee.* The processor eligibility transferee's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Also enter the printed name of the processor eligibility transferee's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(g) *Transfer of processor eligibility*—(1) *General.* An eligible rockfish processor may transfer eligibility to receive and process under the Rockfish Program to another person only by submitting an application to transfer processor eligibility that is subsequently approved by NMFS.

(2) *Limitation on use of processor eligibility.* Any person becoming an eligible rockfish processor by transfer may not receive fish harvested under the Rockfish Program outside of the community listed by the original recipient of the processor eligibility in the application to participate in the Rockfish Program under § 679.80(e)(4)(ii)(C).

(3) *Non-severability of processor eligibility.* An eligible rockfish processor permit may not be divided or suballocated.

(h) *Maximum retainable amount (MRA) limits*—(1) *Rockfish cooperative.* A rockfish cooperative may harvest groundfish species not allocated as CFQ up to the MRA for that species as established in Table 30 to this part.

(2) *Catcher/processor sector rockfish limited access fishery.* An eligible rockfish harvester in the catcher/processor rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the MRA for that species as established in Table 30 to this part.

(3) *Catcher vessel sector rockfish limited access fishery.* An eligible rockfish harvester in the catcher vessel rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the MRA for that species as established in Table 30 to this part.

(4) *Opt-out fishery.* An eligible rockfish harvester in the opt-out fishery may harvest groundfish species other than primary rockfish species up to the MRA for that species as established in Table 10 to this part.

(5) *Rockfish entry level fishery.* An eligible entry level harvester in the rockfish entry level fishery may harvest groundfish species other than primary rockfish species up to the MRA for that species as established in Table 10 to this part.

(6) *Maximum retainable amounts (MRA).* (i) The MRAs for an incidental catch species for vessels participating in a rockfish cooperative, or a rockfish limited access fishery, is calculated as a proportion of the total allocated primary rockfish species on board the vessel in round weight equivalents using the retainable percentages in Table 30 to this part; except that:

(ii) In the catcher vessel sector, shortraker and rougheye rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of the retained weight of all primary rockfish species during that fishing trip.

(iii) Once the amount of shortraker rockfish retained in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by the catcher vessel sector.

(iv) In the rockfish limited access fishery for the catcher/processor sector, shortraker and rougheye rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of

the retained weight of all primary rockfish species during that fishing trip.

(v) Once the amount of shortraker rockfish retained in the catcher/processor sector is equal to 30.03 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(vi) Once the amount of rougheye rockfish retained in the catcher/processor sector is equal to 58.87 percent of the rougheye rockfish TAC in the Central GOA regulatory area, then rougheye rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(i) *Rockfish cooperative*—(1) *General.* This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of applying for and fishing with CFQ issued annually by NMFS. Members of rockfish cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the rockfish cooperative's proposed conduct. Membership in a rockfish cooperative is voluntary. No person may be required to join that rockfish cooperative. Upon receipt of written notification that a person is eligible and wants to join a rockfish cooperative, that rockfish cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the contract governing the conduct of the rockfish cooperative. Members may leave a rockfish cooperative, but any CFQ contributed by the rockfish QS held by that member remains with that rockfish cooperative for the remainder of the calendar year. If a person becomes the holder of an LLP license that has been assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license.

(2) *Legal and organizational requirements.* A rockfish cooperative must meet the following legal and organizational requirements before it is eligible to receive CFQ:

(i) Each rockfish cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each rockfish cooperative must appoint an individual as authorized representative to act on the rockfish cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the rockfish cooperative. The authorized representative may be a member of the rockfish cooperative, if an individual person, or some other individual authorized by the rockfish cooperative to act on its behalf;

(iii) Each rockfish cooperative must submit a complete and timely application for CFQ;

(iv) Each rockfish cooperative must meet the mandatory requirements established in paragraphs (i)(3) and (4) of this section applicable to that rockfish cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(i) Who may join a rockfish cooperative?	Only persons who are eligible rockfish harvesters may join a rockfish cooperative. Persons who are not eligible rockfish harvesters may be employed by, or serve as the authorized representative of a rockfish cooperative, but are not members of the rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	2 LLP licenses assigned rockfish QS in the catcher/processor sector. These licenses can be held by one or more persons.
(iii) Is an association with an eligible rockfish processor required?	Yes. An eligible rockfish harvester may only be a member of a rockfish cooperative formed in association with an eligible rockfish processor to which the harvester made the plurality of legal rockfish landings assigned to the LLP license(s) during the applicable processor qualifying period chosen by an eligible rockfish processor in the application to participate in the Rockfish Program.	No.
(iv) What if an eligible rockfish harvester did not deliver any legal rockfish landings assigned to an LLP license to an eligible rockfish processor during a processor qualifying period?	That eligible rockfish harvester can assign that LLP license to any rockfish cooperative.	N/A.
(v) What is the processor qualifying period?	The processor qualifying period is the four of five years from 1996 through 2000 that are used to establish the legal rockfish landings that are considered for purposes of establishing an association with an eligible rockfish processor. Each eligible rockfish processor will select a processor qualifying period in the application to participate in the Rockfish Program. The processor qualifying period may not be changed once selected for that eligible rockfish processor, including upon transfer of processor eligibility. The same processor qualifying period will be used for all LLP licenses to determine the legal rockfish landings that are considered for purposes of eligible rockfish harvesters establishing an association with an eligible rockfish processor.	N/A.

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(vi) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	Yes. A rockfish cooperative must be assigned rockfish QS that represents at least 75 percent of all the legal rockfish landings of primary rockfish species delivered to that eligible rockfish processor during the four years selected by that processor.	No.
(vii) What is allocated to the rockfish cooperative?	CFQ for primary rockfish species, secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP license that are assigned to the cooperative.	
(viii) Is this CFQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CFQ, or a cooperative can transfer all or a portion of this CFQ to another rockfish cooperative.	
(ix) Is there a season during which designated vessels must catch CFQ?	Yes, any vessel designated to catch CFQ for a rockfish cooperative is limited to catching CFQ during the season beginning on 1200 hours A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(x) Can any vessel catch a rockfish cooperative's CFQ?	No. only vessels that are named on the application for CFQ for that rockfish cooperative, including any vessels named on amendment(s) to that application, can catch the CFQ assigned to that rockfish cooperative.	
(xi) Can the member of a rockfish cooperative transfer CFQ individually without the approval of the other members of the rockfish cooperative.	No, only the rockfish cooperative, and not individual members, may transfer its CFQ to another rockfish cooperative, but only if that transfer is approved by NMFS as established under paragraph (i) of this section.	
(xii) Can a rockfish cooperative in the catcher/processor sector transfer a sideboard to that rockfish cooperative?	N/A.	No, sideboard limits are limits applicable to that rockfish cooperative, and may not be transferred among rockfish cooperative.
(xiii) Is there a hired master requirement?	No, there is no hired master requirement.	N/A.
(xiv) Can an LLP license be reassigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. An eligible rockfish harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xv) Can an eligible rockfish processor be associated with more than one rockfish cooperative?	No. An eligible rockfish processor can only associate with one rockfish cooperative per year. A person who is permitted as an eligible rockfish processor based on holdings of more than one processing history would be issued a separate eligible rockfish processor permit for that processing history and may be able to form an association with a rockfish cooperative as a separate and distinct eligible rockfish processor subject to any other restrictions that may apply.	N/A.
(xvi) Can an LLP license be assigned to a rockfish cooperative and the rockfish limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any rockfish QS assigned to that LLP license yields CFQ to that rockfish cooperative for the calendar year.	
(xvii) Which members may harvest the rockfish cooperative's CFQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xviii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CFQ. A copy of this agreement or contract must be submitted with the application for CFQ.	
(xix) What happens if the rockfish cooperative exceeds its CFQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CFQ. Exceeding a CFQ is a violation of the regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Program regulations while fishing under authority of a CFQ permit. This liability extends to any persons who are hired to catch or receive CFQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xx) Is there a limit on how much CFQ a rockfish cooperative may hold or use?	Yes, generally, a rockfish cooperative may not hold or use more than 30 percent of the aggregate primary rockfish species CFQ assigned to the catcher vessel sector for that calendar year. See § 679.82(a) for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See § 679.82(a) for the use cap provisions that apply.

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(xxi) Is there a limit on how much CFQ a vessel may harvest?	No. However, a vessel may not catch more CFQ than the CFQ assigned to that rockfish cooperative.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the catcher/processor sector for that calendar year, unless subject to an exemption. See § 679.82(a) for the provisions that apply.
(xxii) If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CFQ?	(A) Any vessel authorized to harvest the CFQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or rockfish halibut PSC against that rockfish cooperative's CFQ from May 1 until November 15, or until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative Termination of Fishing Declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CFQ if the vessel is not authorized to harvest CFQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) Can my cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxiv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year. The annual rockfish cooperative report may be made available to NMFS by mailing a copy to NMFS: Regional Administrator, P.O. Box 21668, Juneau, AK 99802.	
(xxv) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CFQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

(4) *Additional mandatory requirements*—(i) *Calculation of minimum legal rockfish landings for forming a rockfish cooperative.* If an eligible rockfish harvester holds an LLP license with rockfish QS for the catcher vessel sector that does not have any legal rockfish landings associated with an eligible rockfish processor from January 1, 1996, through December 31, 2000, during the fishery seasons established in Table 28 to this part, that eligible rockfish harvester may join any rockfish cooperative with that LLP license. Any such eligible rockfish harvester that joins a rockfish cooperative may not be considered as contributing an amount of legal rockfish landings necessary to meet a minimum of 75 percent of the total legal rockfish landings that were delivered to that eligible rockfish processor during the four calendar years selected by that eligible rockfish processor for the purposes of establishing the minimum legal rockfish landings required to form a rockfish cooperative.

(ii) *Restrictions on fishing CFQ assigned to a rockfish cooperative.* A person fishing for CFQ assigned to a rockfish cooperative must maintain a copy of the CFQ permit aboard any vessel that is being used to harvest any primary rockfish species, or secondary species, or uses any rockfish halibut PSC.

(iii) *Transfer of CFQ among rockfish cooperatives.* Rockfish cooperatives may transfer CFQ during a calendar year with the following restrictions:

(A) A rockfish cooperative may only transfer CFQ to another rockfish cooperative;

(B) A rockfish cooperative may only receive CFQ from another rockfish cooperative;

(C) A rockfish cooperative in the catcher vessel sector may not transfer any CFQ to a rockfish cooperative in the catcher/processor sector;

(D) A rockfish cooperative receiving primary rockfish species CFQ by transfer must assign that primary rockfish species CFQ to a member(s) of the rockfish cooperative for the purposes of calculating the amount of primary rockfish species CFQ held by that member for application of the use caps established under § 679.82(a);

(E) A rockfish cooperative may not transfer any sideboard limit assigned to that rockfish cooperative; and

(F) A rockfish cooperative may not receive any CFQ by transfer after NMFS has approved a rockfish cooperative Termination of Fishing Declaration that was submitted by that rockfish cooperative.

(5) *Use of CFQ.* (i) A rockfish cooperative in the catcher vessel sector may not use a primary rockfish species CFQ in excess of the amounts specified in § 679.82(a).

(ii) Rockfish cooperative primary rockfish species CFQ transferred to another rockfish cooperative will apply to the use caps of a named member(s) of the rockfish cooperative receiving the CFQ, as specified in the transfer application.

(A) Each pound of CFQ must be assigned to a member of the rockfish cooperative receiving the CFQ for purposes of use cap calculations. No member of a rockfish cooperative may not exceed the CFQ use cap applicable to that member.

(B) For purposes of CFQ use cap calculation, the total amount of CFQ held or used by a person is equal to all pounds of CFQ assigned to that person by the rockfish cooperative from approved transfers.

(C) The amount of rockfish QS held by a person, and CFQ derived from that rockfish QS is calculated using the individual and collective use cap rule established in § 679.82(a).

(6) *Successors-in-interest.* If a member of a rockfish cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the LLP license(s) and associated rockfish QS held by that person will be transferred to the legal successor-in-interest under the procedures described at § 679.4(k)(6)(iv)(A). However, the CFQ

derived from that rockfish QS and assigned to the rockfish cooperative for that year from that person remains under the control of the rockfish cooperative for the duration of that calendar year. Each rockfish cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of an LLP license and associated rockfish QS, or the transfer of the processor eligibility due to the death or dissolution of a rockfish cooperative member or associated eligible rockfish processor.

§ 679.82 Rockfish Program use caps and sideboard limits.

(a) *Use caps*—(1) *General.* Use caps limit the amount of rockfish QS and CFQ of primary rockfish species that may be held or used, and the amount of primary rockfish species TAC that may be received, by an eligible rockfish processor. Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are three types of use caps: person use caps; vessel use caps; and processor use caps. Person use caps limit the maximum amount of aggregate rockfish QS a person may hold and the maximum amount of aggregate primary rockfish species CFQ that a person may hold or use. Person use caps apply to eligible rockfish harvesters and rockfish cooperatives. Vessel use caps limit the maximum amount of aggregate primary rockfish species CFQ that a vessel operating as a catcher/processor may harvest. Processor use caps limit the maximum amount of aggregate primary rockfish species that may be received or processed by an eligible rockfish processor. All rockfish QS use caps are based on the aggregate primary rockfish species initial rockfish QS pool established by NMFS. The use caps apply as follows:

(2) *Eligible rockfish harvester use cap.* An eligible rockfish harvester may not individually or collectively hold or use more than:

(i) Five (5.0) percent of the aggregate rockfish QS initially assigned to the catcher vessel sector and resulting CFQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section;

(ii) Twenty (20.0) percent of the aggregate rockfish QS initially assigned to the catcher/processor sector and resulting CFQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

(3) *CFQ use cap for rockfish cooperatives in the catcher vessel sector.* A rockfish cooperative may not individually or collectively hold or use an amount of CFQ that is greater than the amount derived from 30.0 percent of the aggregate rockfish QS initially assigned to the catcher vessel sector unless all members of that rockfish cooperative qualify for an exemption to this use cap under paragraph (a)(6) of this section.

(4) *CFQ use cap for a vessel in the catcher/processor sector.* A vessel harvesting CFQ in the catcher/processor sector may not harvest an amount of CFQ that is greater than the amount derived from 60.0 percent of the aggregate rockfish QS initially assigned to the catcher/processor unless the CFQ harvested by that vessel is derived from the rockfish QS assigned to an LLP licence that was used on that vessel prior to June 6, 2005, and that LLP license is assigned rockfish QS that results in CFQ in excess of the use cap.

(5) *Primary rockfish species use cap for eligible rockfish processors.* (i) An eligible rockfish processor may not receive or process in excess of 30.0 percent of the aggregate primary rockfish species TAC, including CFQ, assigned to the catcher vessel sector unless the eligible rockfish processor is receiving or processing CFQ assigned to a rockfish cooperative and the members of that rockfish cooperative qualify for an exemption to this CFQ use cap under paragraph (a)(6) of this section.

(ii) The amount of aggregate primary rockfish species TAC that is received by an eligible rockfish processor is calculated based on the sum of all aggregate primary rockfish species TAC, including CFQ, received or processed by that eligible rockfish processor and the aggregate primary rockfish species TAC received or processed by any entity in which that eligible rockfish processor has a ''10 percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' as that term is defined in § 679.2.

(6) *Use cap exemptions*—(i) *Rockfish QS.* An eligible rockfish harvester may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester prior to June 6, 2005.

(ii) *Transfer limitations.* (A) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(B) If an eligible rockfish harvester transfers an LLP license and assigned rockfish QS to another person, the eligible rockfish harvester that transferred that LLP license may not hold more than the amount of rockfish QS held by that eligible rockfish harvester after the transfer or the rockfish QS use cap established in paragraph (a)(2) of this section, whichever is greater.

(C) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section may not be allowed to receive any rockfish QS by transfer or have any CFQ attributed to that eligible rockfish harvester in a rockfish cooperative unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(iii) *CFQ.* An rockfish cooperative may use CFQ in excess of the use cap in that sector only if that CFQ is derived from the rockfish QS assigned to an LLP licence that was held by that eligible rockfish harvester prior to June 6, 2005.

(b) *Rockfish limited access fishery*—(1) *General.* (i) An eligible rockfish harvester may use an LLP license and assigned rockfish QS in the appropriate rockfish limited access fishery only if:

(A) That person submitted a complete and timely application for the rockfish limited access fishery that is approved by NMFS; or

(B) That LLP is not assigned to a rockfish cooperative for that calendar year, and that person has not submitted a complete and timely application to opt-out of the Rockfish Program that is approved by NMFS.

(ii) [Reserved]

(2) *Limited access fishery sectors.* (i) If an LLP license with rockfish QS in the catcher vessel sector is assigned to a limited access fishery, it is assigned to the catcher vessel rockfish limited access fishery.

(ii) If an LLP license with a rockfish QS in the catcher/processor sector is assigned a limited access fishery, it is assigned to the catcher/processor rockfish limited access fishery.

(3) *Primary rockfish species harvest limit.* All vessels that are participating in a rockfish limited access fishery may harvest an amount of primary rockfish species not greater than the TAC assigned to that primary rockfish

species for the rockfish limited access fishery in that sector.

(4) *Secondary species allocations.* Secondary species shall be managed based on an MRA as established under Table 30 to this part.

(5) *Rockfish halibut PSC allocations.* Halibut caught by vessels in the rockfish limited access fishery shall be accounted against the halibut PSC allocation to the deep water species fishery complex for trawl gear for that seasonal apportionment for that sector. If the halibut PSC limit in the deep water fishery complex has been reached or exceeded for that seasonal apportionment for that sector, the rockfish limited access fishery will be closed until deep water species fishery complex halibut PSC is available for that sector.

(6) *Opening of the rockfish limited access fishery.* The Regional Administrator maintains the authority to not open a rockfish limited access fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(c) *Opt-out fishery.* An eligible rockfish harvester who holds an LLP license and who submits an application to opt-out with that LLP licence that is subsequently approved by NMFS may not fish in any directed fishery for any primary rockfish species in the Central GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season with any vessel named on that LLP license.

(d) *Sideboard limitations—General.* The regulations in this section restrict the holders of LLP licenses eligible to receive rockfish QS from using the increased flexibility provided by the Rockfish Program to expand their level of participation in other groundfish fisheries. These limitations are commonly known as ''sideboards.''

(1) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraphs (d) through (h)of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard limitation and issue a revised Federal Fisheries Permit and/or LLP license that displays the limitation on the face of the permit or LLP license.

(2) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing to the RAM Program, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, together with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described at § 679.43.

(3) *Classes of sideboard restrictions.* There are several types of sideboard restrictions that apply under the Rockfish Program:

(i) General sideboard restrictions as described under this paragraph (d);

(ii) Catcher vessel sideboard restrictions as described under paragraph (e) of this section;

(iii) Catcher/processor rockfish cooperative sideboard restrictions as described under paragraph (f) of this section;

(iv) Catcher/processor limited access sideboard restrictions as described under paragraph (g) of this section; and

(v) Catcher/processor opt-out sideboard restrictions as described under paragraph (h) of this section.

(4) *General sideboard restrictions.* General sideboard restrictions apply to fishing activities during July 1 through July 31 of each year in each fishery as follows:

(i) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish fisheries in the regulatory area of the Western GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish fisheries in the Western Yakutat District and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) The use of halibut PSC in the following directed fisheries in the West Yakutat District, Central GOA, and Western GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season:

(A) Rex sole;

(B) Deep water flatfish;

(C) Arrowtooth flounder;

(D) Shallow water flatfish; and

(E) Flathead sole.

(5) *Vessels and LLP licenses subject to general and halibut PSC sideboard limitations.* (i) The sideboard fishing limitations described in paragraph (d) of this section apply both to the fishing vessel itself and to any LLP license derived in whole or in part from the history of that vessel. The sideboard limitations apply to any vessel named on that LLP license. These sideboard restrictions apply even if an LLP license holder did not submit an application to participate in the Rockfish Program but that LLP license is otherwise eligible to receive rockfish QS under the Rockfish Program based on legal rockfish landings.

(ii) Except as described in paragraph (d)(5)(iii) of this section, the owner of any vessel that NMFS has determined meets one of the following criteria is subject to groundfish directed fishing sideboard limits and halibut mortality sideboard limits issued under this paragraph (d):

(A) Any vessel whose legal rockfish landings could generate rockfish QS;

(B) Any LLP license under whose authority legal rockfish landings were made;

(C) Any vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a vessel meeting the criteria in paragraph (d)(5) of this section.

(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.63(b)(1)(i)(B) is exempt from the sideboard limits in this paragraph (d).

(6) *Determination of general sideboard ratios.* (i) Separate sideboard ratios for each rockfish sideboard fishery are established for the catcher vessel and the catcher/processor sectors. The general sideboard ratio for each fishery is determined according to the following table:

For the management area of the . . .	In the directed fishery for . . .	The sideboard limit for the catcher-processor sector is . . .	The sideboard limit for the catcher vessel sector is . . .
West Yakutat District	Pelagic Shelf Rockfish	72.4 percent of the TAC	1.7 percent of the TAC.
	Pacific ocean perch	76.0 percent of the TAC	2.9 percent of the TAC.
Western GOA	Pelagic Shelf Rockfish	63.3 percent of the TAC	0.0 percent of the TAC.
	Pacific ocean perch	61.1 percent of the TAC	*

For the management area of the . . .	In the directed fishery for . . .	The sideboard limit for the catcher-processor sector is . . .	The sideboard limit for the catcher vessel sector is . . .
	Northern Rockfish	78.9 percent of the TAC	0.0 percent of the TAC.

* Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard limit for that rockfish cooperative as a percentage of the general sideboard ratio for that fishery in that catcher/processor sector.

(iii) The sideboard ratios that are applicable for each general sideboarded fishery for a rockfish cooperative in the catcher/processor sector are calculated by dividing the aggregate retained catch of that fishery, from July 1 through July 31 in each year from 1996 through 2002, caught by vessels in that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), by the total retained catch from July 1 through July 31 in each year from 1996 through 2002 caught by all groundfish vessels in that sector.

(7) *Management of annual sideboard limits*—(i) *Sideboard directed fishing allowance*. (A) If the Regional Administrator determines that an annual sideboard limit for a general rockfish sideboard fishery has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the group of vessels to which the general sideboard limit applies. A directed fishing allowance that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative to which it is assigned.

(B) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that species or species group, then the Regional Administrator may set the directed fishing allowance to zero for that species or species group for that sector or rockfish cooperative, as applicable.

(ii) *Directed fishing closures*. Upon attainment of a general directed fishing sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified sector, regulatory area, or district.

(8) *Determination of halibut PSC sideboard ratios*. (i) Sideboards for halibut PSC are established for the catcher vessel and the catcher/processor sectors separately. Sideboard limits for halibut PSC are calculated for each rockfish cooperative in the catcher/processor sector separately. The halibut PSC sideboard limit for each sector is established according to the following table:

For the management area in the . . .	And for following sector . . .	The annual deep-water complex halibut PSC sideboard limit is . . .	The annual shallow-water complex halibut PSC sideboard limit is . . .
Western GOA	Catcher/Processor Sector	1.56 percent of the GOA annual halibut mortality limit.	0.16 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector	0.00 percent of the GOA annual halibut mortality limit.	0.00 percent of the GOA annual halibut mortality limit.
Central GOA	Catcher/Processor Sector	1.78 percent of the GOA annual halibut mortality limit.	0.37 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector	0.98 percent of the GOA annual halibit mortality limit.	6.14 percent of the GOA annual halibut mortality limit.
West Yakutat District	Catcher/Processor Sector	0.65 percent of the GOA annual halibut mortality limit.	0.01 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector	0.10 percent of the GOA annual halibut mortality limit.	0.18 percent of the GOA annual halibut mortality limit.

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard for that rockfish cooperative as a percentage of the halibut PSC sideboard limit for the catcher/processor sector. The catcher/processor sector not in a rockfish cooperative will receive the portion of the halibut PSC sideboard limit not assigned to rockfish cooperatives.

(9) *Management of halibut PSC sideboard limits*—(i) *Halibut PSC sideboard limits*. The resulting halibut PSC sideboard limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(A) If the Regional Administrator determines that a halibut PSC sideboard limit is sufficient to support a directed fishery for groundfish specified under paragraph (d)(1)(ii) of this section for a particular sector, then the Regional Administrator may establish a halibut PSC sideboard limit for the species complex applicable only to the group of vessels in that sector to which the halibut PSC sideboard limit applies. A halibut PSC sideboard limit that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative in the catcher/processor sector to which it is assigned.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a groundfish fishery specified under paragraph (d)(1)(ii) of this section for a particular sector, then the Regional Administrator may set the halibut PSC sideboard limit to zero for that sector or rockfish cooperative in the catcher/processor sector for that species complex.

(ii) Directed fishing closures. Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species complex in the specified sector, rockfish cooperative in the catcher/processor sector, regulatory area, or district. The specific directed fishing closures that will be implemented if a halibut PSC sideboard limit is reached are:

(A) If the shallow-water halibut PSC sideboard limit for a sector or rockfish cooperative in the catcher/processor sector is reached, then NMFS will close directed fishing in that management area for:

(*1*) Flathead sole; and

(*2*) Shallow water flatfish.

(B) If the deep-water halibut PSC sideboard limit is reached for a sector,

or rockfish cooperative in the catcher/processor sector is reached, then NMFS will close directed fishing in that management area for:

(*1*) Rex sole;

(*2*) Deep water flatfish; and

(*3*) Arrowtooth flounder.

(iii) *Halibut PSC accounting.* The halibut PSC sideboard limit in the deep-water species complex in the GOA from July 1 through July 31 will include any halibut mortality occurring under a CFQ permit or in a rockfish limited access fishery.

(e) *Sideboard provisions for catcher vessels*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, except as described in paragraph (d)(5)(iii) of this section, the following additional sideboards apply to catcher vessels.

(2) *Catcher vessels subject to catcher vessel sideboard limits.* Any catcher vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

(i) Any catcher vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program;

(ii) Any catcher vessel named on an LLP license under which catch history was used to qualify that LLP license for eligibility in the Rockfish Program; or

(iii) Any catcher vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a catcher vessel.

(3) *Prohibition for directed fishing in BSAI groundfish fisheries during July.* Vessels subject to the provisions of this paragraph (e) may not participate in directed fishing in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from July 1 through July 31 in any of the following directed fisheries:

(i) Alaska plaice;

(ii) Arrowtooth flounder;

(iii) Flathead sole;

(iv) Other flatfish;

(v) Pacific ocean perch;

(vi) Rock sole; and

(vii) Yellowfin sole.

(4) *Limitation on directed fishing for BSAI Pacific cod in July*—(i) *Applicability.* Vessels subject to the provisions of this paragraph (e) are limited to a BSAI Pacific cod sideboard limit during July 1 through July 31.

(ii) *Determination of BSAI Pacific cod sideboard ratio.* The sideboard ratio for the BSAI Pacific cod fishery is calculated by dividing the aggregate retained catch of BSAI Pacific cod from July 1 through July 31 in each year from 1996 through 2002 caught by catcher vessels that are subject to the BSAI Pacific cod sideboard under this paragraph (e), by the total retained catch of BSAI Pacific cod caught by all groundfish trawl catcher vessels from July 1 through July 31 in each year from 1996 through 2002.

(iii) *Conversion of BSAI Pacific cod sideboard ratio into sideboard limits.* NMFS will convert BSAI Pacific cod sideboard ratios into annual sideboard limits according to the following procedures:

(A) *Sideboard amount determination.* Each year, the sideboard limit for BSAI Pacific cod from July 1 through July 31 is established by multiplying the sideboard ratios calculated under this paragraph (e) by the final TACs in each sector and gear type for which a TAC is specified. The resulting harvest limits expressed in metric tons will be published in the annual BSAI groundfish harvest specification notice.

(B) *Management of the sideboard.* (*1*) If the Regional Administrator determines that a limit for the BSAI Pacific cod sideboard fishery has been or will be reached, then the Regional Administrator may establish a BSAI Pacific cod directed fishing allowance applicable only to the group of vessels to which the BSAI Pacific cod sideboard limit applies.

(*2*) If the Regional Administrator determines that a limit is insufficient to support a directed fishery for BSAI Pacific cod, then the Regional Administrator may set the BSAI Pacific cod sideboard directed fishing allowance at zero.

(5) *Directed fishing closures.* Upon determination that a BSAI Pacific cod sideboard limit is, or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species.

(f) *Sideboard provisions—catcher/processor rockfish cooperative provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following additional sideboard limits under paragraph (f) of this section apply to any catcher/processor vessels and LLP licenses that are participating in a rockfish cooperative in the catcher/processor sector.

(2) *Vessels subject to rockfish cooperative sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under paragraph (f) of this section:

(i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a rockfish cooperative;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in a rockfish cooperative; or

(iii) Any catcher/processor vessel named on an LLP license specified in an application for CFQ.

(3) *Prohibition from fishing in BSAI groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in directed groundfish fisheries in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season between July 1 and July 14 except for sablefish harvested under the IFQ Program and pollock.

(4) *Prohibitions for fishing in GOA groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except sablefish harvested under the IFQ Program:

(i) From July 1 through July 14 if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has harvested any CFQ of any primary rockfish species prior to July 1.

(ii) From July 1 until 90 percent of the rockfish cooperative's primary rockfish species CFQ has been harvested if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has not harvested any CFQ prior to July 1.

(iii) The prohibition on fishing in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except sablefish harvested under the IFQ Program does not apply if all vessels in the rockfish cooperative maintain an adequate monitoring plan during all fishing for any CFQ or any directed sideboard fishery as required under § 679.84(c) through (e).

(g) *Sideboard provisions—catcher/processor limited access provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboard limits under paragraph (g) of this section apply to any catcher/processor vessels and LLP licenses that

are used in the rockfish limited access fishery for the catcher/processor sector.

(2) *Vessels subject to rockfish limited access fishery sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under paragraph (g) of this section.

(i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a catcher/processor rockfish limited access fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the catcher/processor rockfish limited access fishery;

(iii) Any catcher/processor vessel named on an LLP license specified in an application for the rockfish limited access fishery for the catcher/processor sector; or

(iv) Any vessel named on an LLP license with legal rockfish landings in the catcher/processor sector if that LLP license is not specified in an application for CFQ or an application to opt-out.

(3) *Prohibition from directed fishing in GOA and BSAI groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery that has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any:

(i) GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season other than sablefish harvested under the IFQ Program; or

(ii) BSAI groundfish fishery and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season other than sablefish harvested under the IFQ Program or pollock, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested.

(h) *Sideboard provisions—catcher/processor opt-out provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboards under paragraph (h) of this section apply to any catcher/processor vessels and LLP licenses that have submitted an application to opt-out that is subsequently approved by NMFS.

(2) *Vessels subject to opt-out sideboard provisions.* (i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to the opt-out fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the opt-out fishery; or

(iii) Any catcher/processor vessel named on an LLP license specified in an application to opt-out.

(3) *Prohibitions on Central GOA rockfish directed harvest by opt-out vessels.* Any vessel that is subject to the opt-out sideboard restriction under this paragraph (h) is prohibited from directed fishing for the following species in the following management areas:

(i) Central GOA northern rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Central GOA Pacific ocean perch and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) Central GOA pelagic shelf rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(4) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.* (i) Any vessel that is subject to the opt-out sideboard restriction under paragraph (c) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any two years from 1996 through 2002 during the following time periods:

(A) June 30, 1996 through July 6, 1996;

(B) June 29, 1997 through July 5, 1997;

(C) June 28, 1998 through July 4, 1998;

(D) July 4, 1999 through July 10, 1999;

(E) July 8, 2000 through July 15, 2000;

(F) July 1, 2001 through July 7, 2001; and

(G) June 30, 2002 through July 6, 2002.

(ii) For purposes of this paragraph (h), participation in a fishery in Statistical Area 650 during a time period specified in paragraph (h)(4)(i) of this section shall be considered as participation in that same fishery in Statistical Area 640 during that time period.

§ 679.83 Rockfish Program entry level fishery.

(a) *Rockfish entry level fishery*—(1) *General.* An eligible entry level harvester and eligible entry level processor may participate in the rockfish entry level fishery under the following regulations under this section:

(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.

(ii) *Fixed gear vessels.* Fixed gear vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to fixed gear vessels shall be made after the allocation to trawl catcher vessels.

(iii) *Secondary species allocations.* Secondary species shall not be allocated to the rockfish entry level fishery. Secondary species shall be managed based on a MRA for the target species as described in Table 10 to this part.

(iv) *Halibut PSC allocations—trawl vessels.* Halibut PSC from trawl vessels in the rockfish entry level fishery shall be accounted against the allocation to the deep water species fishery complex for that seasonal apportionment. If the Halibut PSC allocation in the deep water fishery complex has been achieved or exceeded for that seasonal apportionment, the rockfish entry level fishery for trawl vessels will be closed until deep water species fishery complex halibut PSC is available.

(v) *Halibut PSC allocations-fixed gear vessels.* Halibut PSC from fixed gear vessels in the rockfish entry level fishery shall be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the Halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the rockfish entry level fishery for fixed gear vessels will be closed until deep water

species fishery complex halibut PSC is available.

(2) *Reallocation among trawl and fixed gear vessels.* Any allocation of Pacific ocean perch, northen rockfish, or pelagic shelf rockfish that has not been harvested by 1200 hours A.l.t. on September 1, may be harvested by either trawl or fixed gear vessels in the rockfish entry level fishery.

(3) *Opening of the rockfish entry level fishery.* The Regional Administrator maintains the authority to not open the rockfish entry level fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(b) [Reserved]

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting.* See § 679.5(r).

(b) *Permits.* See § 679.4(m).

(c) *Catch monitoring requirements for catcher/processors.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel participating in a rockfish cooperative or the rockfish limited access fishery, or subject to a sideboard limit as described in this section. At all times when a vessel has groundfish aboard that were harvested under a CFQ permit, harvested during a rockfish limited access fishery, or harvested by a vessel subject to a sideboard limit as described under § 679.82(d) through (h) of this section, as applicable, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping.

(6) *Sample storage.* The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clear all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner must comply with the requirements specified in paragraph (c)(9)(i) of this section unless the vessel owner has elected, and had approved by NMFS at the time of the annual observer sampling station inspection, one of the two monitoring options described at paragraph (c)(9)(ii) or (iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice the vessel crew must enter the tank;

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; and,

(E) The observer informs the vessel operator, or his designee that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station and the location from which the observer samples unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained with sufficient clarity to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin while collecting unsorted catch or processing their sample.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp. At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system must include at least one external USB (1.1 or 2.0) hard drive and use commercially available software;

(C) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(D) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120 day period;

(E) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(F) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(G) A 16-bit or better color monitor, for viewing activities within the tank in real time, must be provided within the observer sampling station and have the capacity to display all cameras simultaneously. That monitor must be operating at all times when fish are in the tank. The monitor must be placed at

or near eye level and provide the same resolution as specified in paragraph (c)(9)(iii)(E) of this section;

(H) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(I) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(*1*) The length and width (in pixels) of each image;

(*2*) The file type in which the data are recorded;

(*3*) The type and extent of compression;

(*4*) The frame rate at which the data will be recorded;

(*5*) The brand and model number of the cameras used;

(*6*) The brand, model, and specifications of the lenses used;

(*7*) A scale drawing of the location of each camera and its coverage area;

(*8*) The size and type of storage device;

(*9*) The type, speed, and operating system of any computer that is part of the system;

(*10*) The individual or company responsible for installing and maintaining the system;

(*11*) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(*12*) Any additional information requested by the Regional Administrator.

(J) Any change to the video system that would affect the system's functionality be submitted to, and approved by the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (c)(9)(ii) or (c)(9)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel shall use the monitoring option specified in paragraph (c)(9)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(d) *Catch monitoring requirements for catcher vessels.* The owner and operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative, rockfish limited access fishery, or rockfish sideboard fishery described in this section.

(e) *Catch monitoring requirements for shoreside and stationary floating processors*—(1) *Catch monitoring and control plan (CMCP).* The owner or operator of a shoreside or stationary floating processor receiving deliveries from a catcher vessel described at § 679.50(c)(7)(ii) must ensure the shoreside or stationary floating processor complies with the CMCP requirements described at § 679.28(g).

(2) *Catch weighing.* All groundfish landed by catcher vessels described at § 679.50(c)(7)(ii) must be sorted, weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by a NMFS-certified observer. The observer must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(3) *Notification requirements.* The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of groundfish harvested in a Rockfish Program fishery at least 1 hour prior to offloading. An observer must be available to monitor each delivery of groundfish harvested in a Rockfish Program fishery. The observer must be available the entire time the delivery is being weighed or sorted.

(f) *Catch accounting*—(1) *Primary rockfish species and secondary species.* All primary rockfish species and secondary species harvested, including harvests in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CFQ permit will be debited against the CFQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(2) *Rockfish halibut PSC.* All rockfish halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CFQ permit will be debited against the CFQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(3) *Groundfish sideboard limits.* All groundfish harvested by a vessel, including groundfish harvested in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit for that groundfish species as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

10. In part 679, Tables 28, 29, and 30 are added to read as follows:

TABLE 28 TO PART 679.—QUALIFYING SEASON DATES IN THE CENTRAL GOA PRIMARY ROCKFISH FISHERIES

A legal rockfish landing includes	Year						
	1996	1997	1998	1999	2000	2001	2002
Northern rockfish that were harvested between;	July 1–July 20	July 1–July 10	July 1–July 14	July 1–July 19 and Aug. 6–Aug. 10.	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by	July 27	July 17	July 21	July 26 and Aug. 17, respectively.	Aug. 2	July 30 and Oct. 28, respectively.	July 28.
Pelagic shelf rockfish that were harvested between;	July 1–Aug. 7, and Oct. 1–Dec. 2.	July 1–July 20	July 1–July 19	July 1–Sept. 3	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by	Aug. 14 and Dec. 9, respectively.	July 27	July 26	Sept. 10	Aug. 2	July 30 and Oct. 28, respectively.	July 28.
Pacific ocean perch that were harvested between;	July 1–July 11	July 1–July 7	July 1–July 6 and July 12–July 14.	July 1–July 11 and Aug. 6–Aug. 8.	July 4–July 15	July 1–July 12	June 30–July 8.
and landed by	July 18	July 14	July 13 and July 21, respectively.	July 18 and Aug. 15, respectively.	July 22	July 19	July 15.

TABLE 29 TO PART 679.—INITIAL ROCKFISH QS POOLS

Initial rockfish QS pol	Northern rockfish	Pelagic shelf rockfish	Pacific ocean perch	Aggregate primary species initial rockfish QS pool
Initial Rockfish QS Pool	9,193,183 units.	7,672,008 units.	18,121,812 units.	34,987,002 units.
Initial Rockfish QS Pool for the Catcher/Process or Sector.	Based on the Official Rockfish Program Record on December 31, 2006.			
Initial Rockfish QS Pool for the Catcher Vessel Sector.	Based on the Official Rockfish Program Record on December 31, 2006.			

TABLE 30 TO PART 679.—ROCKFISH PROGRAM RETAINABLE PERCENTAGES

[In round wt. equivalent]

Fishery	Incidental catch species	Sector	MRA as a percentage of total retained primary rockfish species
Rockfish Cooperative Fishery	Pacific Cod	Catcher/Processor	4.0
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0
	See Non-Allocated Secondary species for "other species."		
Rockfish Limited Access Fishery	Pacific Cod	Catcher Vessel	8.0
	Pacific Cod	Catcher/Processor	4.0
	Sablefish (trawl gear)	Catcher/Processor and Catcher Vessel	3.0
	Shortraker/Rougheye aggregate catch	Catcher/Processor and Catcher Vessel	2.0
	Northern Rockfish	Catcher/Processor and Catcher Vessel	4.0
	Pelagic Shelf Rockfish	Catcher/Processor and Catcher Vessel	4.0
	Pacific ocean perch	Catcher/Processor and Catcher Vessel	4.0
	See Non-Allocated Secondary species for other species.		
Non-Allocated Secondary Species for Rockfish Cooperatives and Rockfish Limited Access Fisheries.	Pollock	Catcher/Processor and Catcher Vessel	20.0
	Deep-Water flatfish	Catcher/Processor and Catcher Vessel	20.0
	Rex Sole	Catcher/Processor and Catcher Vessel	20.0
	Flathead Sole	Catcher/Processor and Catcher Vessel	20.0
	Shallow-water flatfish	Catcher/Processor and Catcher Vessel	20.0
	Arrowtooth	Catcher/Processor and Catcher Vessel	35.0
	Other Rockfish	Catcher/Processor and Catcher Vessel	15.0
	Atka Mackerel	Catcher/Processor and Catcher Vessel	20.0

TABLE 30 TO PART 679.—ROCKFISH PROGRAM RETAINABLE PERCENTAGES—Continued

[In round wt. equivalent]

Fishery	Incidental catch species	Sector	MRA as a percentage of total retained primary rockfish species
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0
	Skates	Catcher/Processor and Catcher Vessel	2.0
	Other Species	Catcher/Processor and Catcher Vessel	2.0
Fixed gear Rockfish Entry Level Fishery	See Table 10 to this part.		
Trawl Rockfish Entry Level Fishery	See Table 10 to this part.		
Opt-out Fishery	See Table 10 to this part.		

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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04–7–000]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

May 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations governing market-based rates for public utilities pursuant to the Federal Power Act (FPA). The Commission is proposing to codify and, in certain respects, revise its current standards for market-based rates for sales of electric energy, capacity, and ancillary services. The Commission is proposing to retain several of the core elements of its current standards for granting market-based rates. However, we propose certain revisions to these standards and seek comment on other issues. The Commission also proposes to streamline certain aspects of its filing requirements to reduce the administrative burdens on applicants, customers and the Commission.

DATES: Comments are due August 7, 2006. Reply comments are due September 6, 2006. Comments should be double spaced and include an executive summary.

ADDRESSES: You may submit comments, identified by Docket No. RM04–7–000, by one of the following methods:

- Agency Web Site: *http://www.ferc.gov*. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Kelly A. Perl (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6421. Elizabeth Arnold (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8818.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to sections 205 and 206 of the Federal Power Act (FPA),[1] the Commission is proposing to amend its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations to govern market-based rate authorizations for wholesale sales of electric energy, capacity and ancillary services by public utilities, including modifying all existing market-based authorizations and tariffs so they will be expressly conditioned on or revised to reflect certain new requirements proposed herein. The major components of this Notice of Proposed Rulemaking (NOPR) are summarized in the next section.

II. Background

2. In 1988, the Commission began considering proposals for market-based pricing of wholesale power sales. The Commission acted on market-based rate proposals filed by various wholesale suppliers on a case-by-case basis. Over the years, the Commission developed a four-prong analysis used to assess whether a seller should be granted market-based rate authority: (1) Whether the seller and its affiliates lack, or have adequately mitigated, market power in generation; (2) whether the seller and its affiliates lack, or have adequately mitigated, market power in transmission; (3) whether the seller or its affiliates can erect other barriers to entry; and (4) whether there is evidence involving the seller or its affiliates that relates to affiliate abuse or reciprocal dealing.

3. The courts have reviewed the Commission's market-based rate program and found that it satisfies the FPA. The FPA requires that all rates demanded by public utilities for the sale of electric energy at wholesale be found 'just and reasonable.'[2] The United States Supreme Court has explained that the just and reasonable standard ''does not compel the Commission to use any single pricing formula.''[3] The United States Court of Appeals for the D.C. Circuit has long held that ''when there is a competitive market the [Commission] may rely upon market-based prices in lieu of cost-of-service regulation to assure a ''just and reasonable'' result.''[4] The Commission's authorization of market-based rates has been found to satisfy the just and reasonable standard of the FPA.[5]

4. The Commission initiated the instant rulemaking proceeding in April 2004 to consider ''the adequacy of the current four-prong analysis and whether and how it should be modified to assure that prices for electric power being sold under market-based rates are just and reasonable under the Federal Power Act.''[6] At that time, the Commission noted that much has changed in the industry since the four-prong analysis was first developed and posed a number of questions that would be explored through a series of technical conferences. The comments from these technical conferences are considered in this NOPR.[7]

5. On April 14, 2004, the Commission issued an order modifying the then-existing generation market power

[1] 16 U.S.C. 824d, 824e (2000).

[2] *Louisiana Energy and Power* v. *FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998) (*citing* 16 U.S.C. 824d(a)) (*Louisiana Energy*).

[3] *Mobil Oil Exploration* v. *United Distribution Co.*, 498 U.S. 211, 224 (1991).

[4] *Elizabethtown Gas Company* v. *FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) (*Elizabethtown Gas*), (*citing Tejas Power Corp.* v. *FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990)).

[5] *See Louisiana Energy; Elizabethtown Gas; Consumers Energy Company* v. *FERC*, 367 F.3d 915, 923 (D.C. Cir. 2004).

[6] *Market-Based Rates for Public Utilities*, 107 FERC ¶ 61,019 at P 1 (2004) (initiating rulemaking proceeding).

[7] A summary of the comments submitted in this proceeding is attached as Appendix E. A list of the commenters is included in Appendix D.

analysis and its policy governing market power mitigation, on an interim basis.[8] The April 14 Order adopted a policy that would provide sellers a number of procedural options, including two indicative generation market power screens (an uncommitted pivotal supplier analysis and an uncommitted market share analysis), and the option of proposing mitigation tailored to the particular circumstances of the seller that would eliminate the ability to exercise market power. The order also explained that sellers could choose to adopt cost-based rates.

6. On July 8, 2004, the Commission acted on requests for rehearing of the April 14 Order, reaffirming the basic analysis, but clarifying and modifying certain instructions for performing the generation market power analysis. The Commission clarified, among other things, the types of data on which sellers and intervenors may rely, and that adjustments may be allowed in certain circumstances. The Commission also clarified that mitigation would be imposed in all markets where a seller is found to have generation market power.

7. The Commission believes it is now appropriate to revise and codify the standards for market-based rates for wholesale sales of electric energy, capacity and ancillary services. Refining and codifying effective standards for market-based rates will help customers by ensuring that they are protected from the exercise of market power. It will also provide greater certainty to sellers seeking market-based rate authority.

8. The regulations proposed herein would adopt in most respects the Commission's current standards for granting market-based rates. We believe these standards have, with the exceptions noted below, allowed the Commission to distinguish between applicants that have market power and those that do not. For example, the current interim horizontal (generation) market power screens [9] have allowed the Commission to identify a number of smaller applicants that do not have generation market power. The Commission authorized these applicants to obtain or retain market-based rate authority, which benefits customers by encouraging new entry and by providing them with the greater flexibility in product offerings that market-based rate approval conveys. The current screens also have allowed the Commission to more accurately identify instances where certain larger sellers may possess market power. If an applicant fails our screens, this does not, however, constitute a definitive finding of market power. Rather, our current standards allow any applicant that fails these screens to demonstrate that it lacks market power in generation using the delivered price test (DPT).[10] The DPT has provided appropriate flexibility in allowing the Commission to consider the differing factual situations of particular sellers, such as those that have a responsibility for serving native load customers. The Commission proposes to continue to apply the DPT in such a flexible manner.

9. In cases where the applicant has failed the DPT, or has otherwise chosen to adopt default cost-based mitigation or to propose other cost-based mitigation (*e.g.,* cost-based rates) or tailored mitigation, our current policies protect customers by ensuring that applicants with market power in a given area have that market power mitigated. We recognize, however, that there has been uncertainty regarding the rate methodologies to use in developing cost-based market power mitigation and the effectiveness of the existing cost-based mitigation. We therefore seek comment in this rulemaking on several issues relating to cost-based market power mitigation, including: (i) Whether there should be a standard methodology for determining cost-based ceiling rates and the appropriate methodology for sales of less than one week; (ii) whether selective discounting should be allowed for sellers that have been found to have market power, or that accept a presumption of market power, and are offering power under cost-based rates; and (iii) whether a mitigated seller that seeks to sell excess power generated within a mitigated market should be required to first offer its available capacity at cost-based rates to customers within the mitigated market.

10. We also propose certain modifications to the horizontal (generation) market power screens to reflect our experience in applying them and the comments received in this proceeding. First, the Commission proposes to modify the treatment of newly-constructed generation to avoid a situation in which all generation becomes exempt from our market power analyses as new generation is constructed and older (pre-1996) generation is retired. Second, although we propose to retain the default relevant geographic market (control area), we provide guidance as to the factors the Commission will consider in evaluating whether, in a particular case, to adopt an expanded geographic market instead of relying on the default geographic market. Third, we propose to change the native load proxy for the market share screens from the minimum peak day in the season to the average peak native load, averaged across all days in the season, and to clarify that native load can only include load attributable to native load customers as that term is defined insection 33.3(d)(4)(i) of the Commission's regulations.[11] Fourth, we propose to allow applicants the option of using seasonal capacity instead of nameplate capacity,[12] and to retain the snapshot in time approach for the screens but to allow ''known and measurable'' changes (sometimes referred to as foreseeable and reasonably certain at the time of filing) for the DPT.

11. With regard to vertical market power and, in particular, transmission market power, the Commission proposes to continue the current policy under which an open access transmission tariff (OATT) is deemed to mitigate a seller's transmission market power.[13] However, in recognition of the fact that OATT violations may nonetheless occur, we propose that violation(s) of the OATT may be cause to revoke market-based rate authority in addition to any other applicable remedies, such as civil penalties. We also note that concerns regarding the adequacy of the current OATT will be addressed in Docket No. RM05–25–000, Preventing Undue Discrimination and Preference in Transmission Service. We are today issuing a Notice of Proposed

[8] *AEP Power Marketing, Inc.,* 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g,* 108 FERC ¶ 61,026 (2004) (July 8 Order).

[9] As discussed below, the Commission proposes to henceforth refer to the generation market power analysis as the horizontal market power analysis.

[10] *See* April 14 Order at P 106 (''The [DPT] defines the relevant market by identifying potential suppliers based on market prices, input costs, and transmission availability, and calculates each suppliers' economic capacity and available economic capacity for each season/load condition. The results of the [DPT] can be used for pivotal supplier, market share and market concentration analyses.'').

[11] 18 CFR 33.3(d)(4)(i) (2005).

[12] Nameplate capacity is the full-load continuous rating of a generator, prime mover, or other electric power production equipment under specific conditions as designated by the manufacturer. Installed generator nameplate rating is usually indicated on a nameplate physically attached to the generator.

[13] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

Rulemaking to reform the OATT in that docket.

12. With regard to vertical market power and, in particular, other barriers to entry, we propose to continue our current approach but provide clarification of what types of factors we would examine and we propose to combine the other barriers to entry analysis with the rest of our vertical market power analysis.

13. With regard to affiliate abuse, the Commission proposes to discontinue referring to affiliate abuse as a separate ''prong'' of our analysis and instead proposes to codify in our regulations an explicit requirement that any seller with market-based rate authority must comply with the affiliate sales restrictions and other affiliate provisions.[14] The Commission proposes to address affiliate abuse by requiring that the conditions set forth in the proposed regulations be satisfied on an ongoing basis as a condition of obtaining and retaining market-based rate authority. The Commission proposes to retain its policy that sales of power between a franchised public utility and any of its non-regulated power sales affiliates [15] must be pre-approved by the Commission. To demonstrate that an affiliate sale is just, reasonable and not unduly discriminatory, an applicant has several options, including pricing that sale at a market index that meets certain standards, conducting an auction that reflects certain guidelines, or otherwise meeting the standards set forth in *Edgar*.[16] An affiliate sale that has not been pre-approved under these standards will constitute a tariff violation. In addition, we reaffirm that the Commission currently requires that sales made under market-based rate tariffs, including those made to affiliates, must be reported in an Electric Quarterly Report (EQR). With regard to affiliate transactions under a market-based rate tariff, we reaffirm that we either grant or deny authorization to make affiliate sales. To the extent that we authorize an affiliate transaction, we reaffirm that, consistent with the Commission's regulations,[17] any such agreement shall not be filed with the Commission.

14. We also propose certain reforms to streamline the administration of the market-based rate program. As discussed more fully below, in an effort to streamline and simplify the market-based rate program in general, while maintaining a high degree of oversight, the Commission proposes several changes and clarifications. Significant areas of modification involve the three-year updated market power analysis (triennial review or updated market power analysis) that all sellers with market-based rate authority are required to file, and the development of a market-based rate tariff of general applicability.

15. With regard to updated market power analyses, the Commission's current general practice is to require an updated market power analysis to be submitted within three years from the date of the Commission order granting the seller market-based rate authority or accepting the previous triennial review. The Commission proposes to modify that general practice and put in place a structured, systematic review to assist the Commission in analyzing sellers in markets based on a coherent and consistent set of data. In particular, the Commission proposes to modify the requirements for filing updated market power analyses in two ways. First, the Commission proposes to establish two categories of sellers with market-based rate authorization. The first category, Category 1 (approximately 550 sellers), would consist of power marketers and power producers that own or control 500 MW or less of generating capacity in aggregate and that are not affiliated with a public utility with a franchised service territory. In addition, Category 1 sellers must not own or control transmission facilities, other than limited equipment necessary to connect individual generating facilities to the transmission grid, (or must have been granted waiver of the requirements of Order No. 888 because such facilities are limited and discrete and do not constitute an integrated grid [18]) and must present no other vertical market power issues. Category 1 sellers would not be required to file a regularly scheduled triennial review. The Commission would monitor any market power concerns for these sellers through the change in status reporting requirement,[19] and through ongoing monitoring by the Commission's Office of Enforcement.

16. The second category, Category 2 (approximately 600 sellers), would include all sellers that do not qualify for Category 1. Category 2 sellers, in addition to the change in status reports, would be required to file regularly scheduled triennial reviews.[20] To ensure greater consistency in the data used to evaluate Category 2 sellers, the Commission proposes to require each Category 2 seller to file updated market power analyses for its relevant geographic markets (default and any proposed alternative markets) on a schedule that will allow examination of the individual seller at the same time that the Commission examines other sellers in these relevant markets and contiguous markets within a region from which power could be imported. The Commission would continue to make findings on an individual seller basis, but would have before it a complete picture of the uncommitted capacity and simultaneous import capability into the relevant geographic markets under review.

17. A second significant change is our proposal to adopt a market-based rate tariff of general applicability (MBR tariff), applicable to all sellers authorized to sell electric energy, capacity or ancillary services at wholesale at market-based rates. Further, the Commission proposes that, rather than each entity having its own MBR tariff, which can result in dozens of tariffs for each corporate family with potentially conflicting provisions, each corporate family would have only one tariff, with all affiliates with market-based rate authority separately

[14] In the case of non-exempt wholesale generator (EWG) public utilities, for matters arising under Part II of the FPA, the term ''affiliate'' is defined as that term is used in section 358.3(b) and (c) (formerly section 161.2) of the Commission's regulations. Section 358.3(b) defines ''affiliate'' as ''another person which controls, is controlled by, or is under common control with, such person.'' Section 358.3(c) states that ''control (including the terms 'controlling,' 'controlled by,' and 'under common control with') * * * includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.'' The term ''affiliate'' in the case of EWG public utilities is defined as ''any company, 5 percent or more of the outstanding voting securities of which are owned, controlled or held with power to vote, directly or indirectly, by such company.'' *See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,096 (2006). (To be codified at 18 CFR section 366.1 (2006).)

[15] By ''non-regulated'' power sales affiliate, the Commission is referring to non-traditional power sellers including a power marketer, EWG, qualifying facilities (QFs), or other power seller affiliate, whose power sales are not regulated on a cost basis under the FPA.

[16] *Boston Edison Company Re: Edgar Electric Energy Co.,* 55 FERC ¶ 61,382 (1991) (*Edgar*) (Describing types of evidence that can be used to demonstrate lack of affiliate abuse.)

[17] *See* 18 CFR 35.1(g) (2005).

[18] *See, e.g., Black Creek Hydro, Inc.,* 77 FERC ¶ 61,232 (1996).

[19] *See* 18 CFR 35.27(c) (2005) (reporting requirement for any change reflecting a departure from the characteristics the Commission relied upon in granting market-based rate authority). Failure to timely file a change in status report would constitute a tariff violation.

[20] Failure to timely file a triennial review would constitute a tariff violation.

identified in the tariff. This will reduce the administrative burden and confusion that occurs when there are multiple, and potentially conflicting, tariffs in a single corporate family. Our intent to streamline the terms of an MBR tariff is not to reduce the flexibility of sellers and customers in negotiating the terms of individual transactions. Rather, this flexibility will continue to exist. The purpose of a tariff of general applicability that requires the seller to comply with the applicable provisions of the market-based rate regulations is simply to codify, on a consistent basis, the basic requirements of market-based rate authorization.

III. Discussion

A. Horizontal Market Power

1. Current Policy

a. Test for Generation Market Power.

18. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power that provide a rebuttable presumption of whether market power exists for a utility applying to obtain or retain market-based rate authority. Sellers that do not pass the initial screens are, among other things, allowed to provide additional evidence for Commission consideration. Such an approach allows the Commission to concentrate its efforts on sellers that may possess generation market power while screening out those sellers that do not pose such concerns.

19. The Commission uses two indicative screens for assessing whether a particular seller raises any generation market power concerns, each with its own specific focus and attributes: a pivotal supplier analysis based on uncommitted capacity at the time of the market's annual peak demand; and a market share analysis of uncommitted capacity applied on a seasonal basis. If a seller passes both screens, there is a rebuttable presumption that the seller does not possess market power in generation. However, the Commission allows intervenors to present evidence to rebut the presumption. On the other hand, if a seller fails either screen, this creates a rebuttable presumption that market power exists in generation.[21] In this instance, the seller may: (1) File a more robust market power study, the DPT; [22] (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will either adopt the default cost-based rates discussed in the April 14 Order or propose other cost-based rates and submit cost support for such rates. Before the Commission considers the DPT, the seller must be found to have failed one (or both) of the two indicative screens or so concede.[23] Accordingly, the DPT is considered as an alternative study to support the grant or continuation of market-based rate authority. In all cases, the seller or intervenors may present evidence such as historical wholesale sales data to support their opinion of whether the seller does or does not possess market power.

20. Section 35.27(a) of the Commission's regulations states that ''any public utility seeking authorization to engage in sales for resale of electric energy at market-based rates shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity for which construction has commenced on or after July 9, 1996.'' [24] Sellers meeting the criteria of section 35.27(a) of our regulations, as clarified in *LG&E Capital*,[25] may provide evidence demonstrating that they satisfy this section of our regulations rather than submit a generation market power analysis. However, if a seller sites generation in an area where it or its affiliates own or control other generation assets, the seller must provide an analysis regarding whether its new capacity (*i.e.*, post-July 9, 1996), when added to existing capacity, raises generation market power concerns.

21. Alternatively, a seller may forego submitting a generation market power analysis and accept a presumption of market power and go directly to mitigation by proposing case-specific mitigation that eliminates the ability to exercise market power, or agreeing to the default rates discussed below. Under such circumstances there will be a presumption of market power in all of the default relevant markets.

22. If a seller's proposed mitigation [26] does not eliminate its ability to exercise market power, then the seller may not charge market-based rates in the geographic area(s) where market power is found, and the seller is subject to cost-based default rates or other cost-based rates that the seller proposes and the Commission approves. The Commission's default rates are as follows: (1) Sales of power of one week or less must be priced at the seller's incremental cost plus a 10 percent adder; (2) sales of power of more than one week but less than one year must be priced at an embedded cost ''up to'' rate reflecting the costs of the unit or units expected to provide the service; and (3) new contracts for sales of power for one year or more must be priced at a rate not to exceed the embedded cost of service, and the contract must be filed with the Commission for review. Mitigated sellers must first receive Commission approval for each long-term power sale prior to transacting.[27]

b. Additional Requirement for Transmission Owners.

23. In addition, a seller that owns, operates or controls transmission is required to conduct simultaneous transmission import capability studies for its home control area and each of its directly-interconnected first-tier control areas consistent with the requirements set forth in the April 14 Order, as clarified in *Pinnacle West Capital Corp.,* 110 FERC ¶ 61,127 (2005). These studies are used in the pivotal supplier screen, market share screen, and DPT to approximate the transmission import capability. When centering the generation market power analysis on the transmission providing utility's first-tier control area (*i.e.*, markets), the transmission-providing seller should use the methodologies consistent with its implementation of its Commission-approved OATT, thereby making a reasonable approximation of simultaneous import capability that would have been available to suppliers in surrounding first-tier markets during each seasonal peak. The transfer capability should also include any other limits (such as stability, voltage, Capacity Benefit Margin, or

[21] In such a case, the Commission will institute a section 206 proceeding and such a seller's rates prospectively will be made subject to refund until a final determination of market power is made or the seller accepts a presumption of market power and so mitigates. April 14 Order, 107 FERC ¶ 61,018 at n. 10.

[22] The only additional market power study allowed is the DPT. However, the Commission allows such sellers to present evidence, based on historical wholesale sales data, in support of a contention that, notwithstanding the results of the two indicative screens, they do not possess market power.

[23] April 14 Order, 107 FERC ¶ 61,018 at P 37.

[24] 18 CFR 35.27(a) (2005).

[25] *LG&E Capital Trimble County LLC,* 98 FERC ¶ 61,261 (2002) (*LG&E Capital*).

[26] Proposals for alternative mitigation in these circumstances could include cost-based rates or other mitigation that the Commission may deem appropriate. For example, an applicant could propose to transfer operational control of enough generation to a third party such that the applicant would satisfy our generation market power concerns.

[27] The Commission notes here that, to the extent a party believes market power is being exerted in the course of negotiating a long-term purchase, such party may file a complaint pursuant to section 206 of the FPA.

Transmission Reliability Margin) as defined in the tariff and that existed during each seasonal peak. The ''contingency'' model should use the same assumptions used historically by the transmission provider in approximating its control area import capability.

24. A seller may provide a streamlined application to show that it passes the indicative screens. Thus, with respect to simultaneous import capability, if a seller can show that it passes the screens for each relevant geographic market without considering imports, no such simultaneous import analysis needs to be provided. Further, the Commission recognizes that certain sellers will not have the ability to perform a simultaneous import capability study. Accordingly, if a seller demonstrates that it is unable to perform a simultaneous import capability study for the control area in which it is located, the seller may propose to use a proxy amount for transmission limits. Such proposals are considered on a case-by-case basis.

c. Relevant Geographic Markets.

25. The default relevant geographic markets under both screens are first, the control area market where the seller is physically located, and second, the markets directly interconnected to the seller's control area market (first-tier control area markets).[28] In this default analysis, the Commission considers only those supplies that are located in the market being considered (relevant market) and those in first-tier markets to the relevant market. Sellers located in and a member of regional transmission organizations (RTO)/independent system operators (ISO) [29] that perform functions such as single central commitment and dispatch with a single energy market and Commission-approved market monitoring and mitigation may consider the geographic region under the control of the RTO/ISO as the default relevant geographic market for purposes of completing their analyses.[30] Currently, these markets are operated by PJM Interconnection, LLC (PJM), ISO New England, Inc. (ISO–NE), New York Independent System Operator, Inc. (NYISO), Midwest Independent Transmission System Operator (Midwest ISO) and California Independent System Operator Corporation (CAISO). For sellers whose assets are physically located geographically within the RTO/ISO boundaries, there is only one default relevant market for those assets, and that is the RTO/ISO in which they are located and are a member. Likewise, where a generator is interconnecting to a non-affiliate owned transmission system, there is only one relevant market, the control area in which the generator is located.

26. The Commission allows sellers and intervenors to present additional sensitivity runs as part of their market power studies to show that some other geographic market should be considered as the relevant market in a particular case. For example, sellers or intervenors can present evidence that the relevant market is broader (or more limited) than a particular control area. However, applicants presenting evidence that the relevant market is larger or smaller than the default relevant market must first complete the screens based on the default market as discussed above. To the extent some other geographic market is studied, the proponent of using that alternative market must adhere to including *all* monitored lines/constraints and critical contingencies that were historically applied during the seasonal peaks in assessing available transmission for non-affiliate transmission customers (*i.e.*, consistent with Open Access Same-Time Information System (OASIS)). Sellers and intervenors may also provide evidence that, because of internal transmission limitations (*e.g.*, load pockets), the relevant market is smaller than the control area.

d. Performance of the Indicative Screens.

27. Both the pivotal supplier analysis and the market share analysis recognize utilities' obligations to serve native load. Because utilities generally use the same generating units to make off-system wholesale sales and to serve native load, and because the amount of generation needed to serve native load can vary from hour to hour, some reasonable proxy is needed to represent the amount of generation that is needed to serve native load. Accordingly, the pivotal supplier analysis, for both sellers and competing suppliers, uses the average of the daily native load peaks during the month in which the annual peak demand day occurs as a proxy for native load obligation. The market share analysis for both sellers and competing suppliers uses the native load obligation on the minimum peak demand day for a given season.

28. In the pivotal supplier screen, a market participant's uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm sales. To calculate the net uncommitted supply available to compete at wholesale, the wholesale load proxy (annual peak load less the native load proxy discussed above) is deducted from total uncommitted capacity in the market.[31] If the seller's uncommitted capacity is equal to or greater than the net uncommitted supply, then the seller fails the pivotal supplier analysis, which creates a rebuttable presumption of market power.

29. In the market share analysis, uncommitted capacity is defined similarly to the pivotal supplier screen, with the additional deduction for planned outages that were done in accordance with good utility practice. Under the market share analysis, a seller that has less than a 20 percent market share in the relevant market for all seasons is considered to satisfy the market share analysis.[32] A seller with a market share of 20 percent or more in the relevant market for any season has a rebuttable presumption of market power but can present historical evidence to show that the seller satisfies the Commission's generation market power concerns.[33]

30. In addition, any seller, regardless of size, has the option of making simplifying assumptions in its analysis where appropriate. In performing all screens, sellers are required to prepare them as designed,[34] and must use the most recently available unadjusted 12

[28] For applications by sellers with no physical generation assets (such as power marketers) and that are affiliated with generation asset owning utilities, the Commission evaluates the affiliate generation owner's market power when evaluating whether to grant market-based rate authority for the power marketer.

[29] We note that the membership status described is such that the seller that owns transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid has turned over operational control of those transmission assets to the RTO/ISO.

[30] LG&E Energy Marketing, Inc., 111 FERC ¶ 61,153 (2005) (noting that where applicants are members of the Midwest ISO and their control area is within the Midwest ISO geographic footprint, the default relevant geographic market for the generation market power analyses is the Midwest ISO).

[31] April 14 Order, 107 FERC ¶ 61,018 at P 99.

[32] The 20 percent threshold is consistent with section 4.134 of the U.S. Department of Justice 1984 Merger Guidelines issued June 14, 1984, reprinted in Trade Reg. Rep. P13,103 (CCH 1988): ''The Department [of Justice] is likely to challenge any merger satisfying the other conditions in which the acquired firm has a market share of 20 percent or more.''

[33] The other evidence the Commission will consider is historical sales and/or access to transmission to move supplies within, out of, and into a control area market.

[34] Sellers presenting evidence that the relevant market is larger or smaller than the default relevant market (*i.e.*, control area) must first complete the screens based on the default relevant geographic market.

months' historical data as a snapshot in time.[35] Sellers filing abbreviated studies may request waiver of the full data requirements.

e. The Delivered Price Test (DPT).

31. Sellers failing one or more of the initial screens will have a rebuttable presumption of market power. If such a seller chooses not to proceed directly to mitigation, it must present a more thorough analysis using the Commission's DPT.[36] The DPT is used to analyze the effect on competition for transfers of jurisdictional facilities in section 203 proceedings,[37] using the framework described in Appendix A of the Merger Policy Statement as revised in Order No. 642.[38] The DPT is an established test that has been used routinely to analyze market power in the merger context for many years, and it has been affirmed by the courts.[39]

32. The DPT defines the relevant market by identifying potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity for each season/load period.[40] The results of the DPT are used for pivotal supplier, market share and market concentration analyses. Using the economic capacity for each supplier, sellers are required to provide pivotal supplier, market share and market concentration analyses. Examining these three measures with the more robust output from the DPT allows sellers to present a more complete view of the competitive conditions and their positions in the relevant markets.

33. Under the DPT, to determine whether a seller is a pivotal supplier in each of the season/load periods, sellers are required to compare the load in the relevant market to the amount of competing supply. The seller will be considered pivotal if the sum of the competing suppliers' economic capacity is less than the load level plus a reserve requirement for the relevant period. The analysis using available economic capacity to account for sellers' and competing suppliers' native load commitments is also required.

34. Each supplier's market share is calculated based on economic capacity, the DPT's analog to installed capacity. The market shares for each season/load period reflect the costs of the seller's and competing suppliers' generation, thus giving a more complete picture of the seller's ability to exercise market power in a given market.

35. Sellers preparing a DPT also must calculate the market concentration using the Hirschman-Herfindahl Index (HHI) based on market shares.[41] For the DPT, a showing of an HHI less than 2,500 in the relevant market for all season/load periods for sellers that have also shown that they are not pivotal and do not possess more than a 20 percent market share in any of the season/load periods would constitute a showing of a lack of market power, absent compelling contrary evidence. We will, however, consider all relevant facts and circumstances in reviewing a DPT, (including native load obligations), and we will balance the record evidence in determining whether or not the seller has generation market power. Thus, even sellers that exceed the foregoing thresholds may receive market-based rates under appropriate circumstances.[42]

36. Sellers and intervenors may present evidence such as historical wholesale sales data, which can be used to calculate market shares and market concentration and to refute or support the results of the DPT. The Commission encourages sellers to present the most complete analysis of competitive conditions in the market as the data allow. In this regard, the Commission allows the introduction of such evidence beyond the most recent 12 months. The use of unadjusted historical sales and transmission data will provide an accurate depiction of actual market activity. Therefore, the Commission requires sellers submitting historical sales and transmission data as evidence to submit the actual data.

37. The FPA requires that all rates charged by public utilities for the transmission or sale for resale of electric energy be just and reasonable.[43] Thus, where a market-based rate seller is found to have market power in generation (*e.g.*, after reviewing a seller's DPT), it is incumbent upon the Commission to either reject such rates or to ensure that adequate mitigation measures are in place to ensure that the rates are just and reasonable. The Commission provides default cost-based rates to ensure that wholesale rates are just and reasonable. If a seller does not pass the generation market power screens, or foregoes the screens entirely, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case-specific circumstances.

38. For sellers that have a presumption of market power in generation (*e.g.* those failing one or both of the indicative screens), the Commission will institute a section 206 proceeding and the seller's rates will prospectively be made subject to refund.[44] For sellers already charging market-based rates, market-based rates will not be revoked and cost-based rates will not be imposed until the Commission issues an order making a definitive finding that the seller has market power in generation (typically, after the Commission has ruled on a DPT analysis) or, where the seller accepts a presumption of market power, an order is issued addressing whether default cost-based rates or case-specific cost-based rates are to be applied. The Commission will revoke the market-based rate authority in all geographic markets where a seller is found to have market power in generation.[45]

2. Proposal

39. The Commission adopted the indicative generation market power screens in the April 14 Order for interim purposes, and instituted the instant rulemaking proceeding to, among other things, review of these screens and, as a whole, the horizontal market power portion of the Commission's four-prong analysis. The Commission has gained

[35] The Commission clarified on rehearing that it will allow adjustments necessary to perform the screens if the seller fully justifies the need for and methodology used for the adjustment and files all workpapers supporting the adjustments and documenting the source data used. July 8 Order, 108 FERC ¶ 61,026 at P 119.

[36] April 14 Order, 107 FERC ¶ 61,018 at P 105–12.

[37] 16 U.S.C. 824b (2000).

[38] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 F.R. 68595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,044 (1996), *reconsideration denied*, Order No. 592–A, 62 F.R. 33341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations,* Order No. 642, 65 F.R. 70984 (2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,111 (2000), *order on reh'g,* Order No. 642–A, 66 F.R. 16121 (2001), 94 FERC ¶ 61,289 (2001).

[39] *See, e.g., Wabash Valley Power Associates, Inc.* v. *FERC,* 268 F. 3d 1105 (D.C. Cir. 2001).

[40] Super-peak, peak, and off-peak, for Winter, Shoulder and Summer periods and an additional highest super-peak for the Summer.

[41] The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, HHI = $(20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2{,}000$.

[42] *See, e.g., Kansas City Power & Light Co.,* 113 FERC ¶ 61,074 at P 30–35 (2005) (*Kansas City*); *Acadia Power Partners, LLC,* 113 FERC ¶ 61,073 at P 40–45 (2005) (*Acadia*).

[43] 16 U.S.C. 824d(a) (2000).

[44] The refund floor would be the default cost-based rates or, if applicable, any case-specific cost-based rates proposed by the seller and accepted by the Commission. Accordingly, the seller has certainty as to its potential refund obligation, if any. April 14 Order, 107 FERC ¶ 61,018 at n. 143.

[45] The seller has the option of withdrawing its market-based rate request in whole or in part.

considerable experience with the analysis since the April 14 Order and believes that in general the current screens work well to identify the subset of sellers that require additional review. Therefore, we propose to continue to use the screens adopted in the April 14 Order as well as the overall approach to analyzing generation market power set forth in the April 14 Order, including the procedural options available to sellers and the use of the DPT. However, commenters have raised some valid concerns and, accordingly, the Commission proposes certain modifications to the screens as adopted in the April 14 Order, such as adjustments to the native load proxy. Furthermore, while reaffirming the screens, we propose that henceforth these screens should be referred to as our horizontal market power analysis. In particular, our horizontal analysis will include, as discussed in the April 14 Order, the two indicative screens and the DPT as necessary.

a. Indicative Screens and DPT Criteria.

40. Because the indicative screens are intended only to identify the sellers that require further review, we propose to retain the 20 percent threshold for the wholesale market share screen. The screens are indicative, not definitive. Indeed, pursuant to the horizontal market power analysis where an applicant is seeking to obtain or retain market-based rate authority, the Commission will not make a definitive finding that a seller has market power unless and until the more robust analysis, the DPT, is considered. Instead, where a seller fails one of the indicative screens, a section 206 proceeding is instituted to more closely examine a seller's potential for exercising horizontal market power and does not mean a definitive finding has been made. Failure to pass either of the indicative screens creates a rebuttable presumption of market power. A seller that fails the initial screens is given 60 days from the date of issuance of an order finding a screen failure to: (1) File a DPT analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the default cost-based rates or propose other cost-based rates and submit cost support for such rates.[46]

41. Some commenters argue that the 20 percent threshold is too low; others argue that it is too high. The Commission believes that the 20 percent threshold strikes the right balance in seeking to avoid both ''false negatives'' and ''false positives'' and proposes to continue using 20 percent. Because the presumption of horizontal market power established by the failure of the wholesale market share screen is rebuttable, coupled with the adjustment to the native load proxy discussed below, sellers should be assured that the 20 percent threshold is not unnecessarily stringent.

42. We also propose to continue the use of annual peak load in the pivotal supplier analysis and not to expand the pivotal supplier analysis to include monthly assessments. The pivotal supplier analysis examines the seller's market power during the annual peak. The hours near that point in time are the most likely times that a seller will be a pivotal supplier.

43. Similarly, for the DPT analysis, we propose to retain our current threshold including 2,500 for HHIs, as well as our current practice of weighing all the relevant factors in the analysis, in determining whether a seller does or does not have horizontal market power. We propose to continue to do so on a case-by-case basis, weighing such factors as available economic capacity, economic capacity, HHIs, and other historical wholesale sales data. The thresholds are well-established and appropriate, allowing the Commission to make a reasoned determination after reviewing all the evidence in the record. The DPT does not function like the initial screens in that the failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure as a whole.[47]

b. Native Load.

44. To reduce the number of ''false positives'' in the wholesale market share screen, however, we propose to adjust the native load proxy. Many commenters have noted that the current native load proxy for the market share screen is too limited and results in too much uncommitted capacity attributable to the seller. The Commission stated in the April 14 Order that by using the two screens together, the Commission is able to measure market power both at peak and off-peak times, and the ability to exercise market power both unilaterally and in coordinated interaction with other sellers. In the April 14 Order, the Commission adopted the native load proxy for the wholesale market share screen in order to balance the concerns of market participants. We now believe that the current proxy used in the market share screen may be too conservative. Accordingly, the Commission proposes to change the allowance for the native load deduction under the market share screen from the minimum native load peak demand for the season to the average native load peak demand for the season. This change makes the deduction for the market share screen consistent with the deduction allowed under the pivotal supplier screen. We propose to retain a season-by-season analysis. For example, the proxy for summer would be the average native load peak for June, July and August. The pivotal supplier screen's native load proxy would remain unchanged from its current proxy of the average of the daily native load peaks during the month in which the annual peak day load occurs. We seek comments on our proposal.

45. We believe there has been some inconsistency in the way in which sellers have reflected native load in performing both the screens and the DPT analysis. For this reason, we also propose to clarify that for the horizontal market power analysis, native load can only include load attributable to native load customers as defined in section 33.3(d)(4)(i) of the Commission's regulations,[48] as it may be revised from time to time. We seek comments on this proposal.

c. Control and Commitment of Generation.

46. The Commission stated that uncommitted capacity is determined by adding the total capacity of generation owned or controlled through contract and firm purchases less, among other things, long-term firm requirements sales that are specifically tied to generation owned or controlled by the seller and that assign operational control of such capacity to the buyer.[49] The Commission further stated that long-term firm load following contracts may be deducted to the extent that the seller has included in its total capacity a corresponding generating unit or long-term firm purchase that will be used to meet the obligation even if such contracts are not tied to a specific generating unit and do not convey operational control of the generation.[50]

47. The Commission has stated that contracts can confer the same rights of control of generation or transmission

[46] April 14 Order, 107 FERC ¶ 61,018 at P 208.

[47] *Kansas City*, 113 FERC ¶ 61,074 at P 30; *Acadia*, 113 FERC ¶ 61,073 at P 40.

[48] 18 CFR 33.3(d)(4)(i) provides: Native load commitments are commitments to serve wholesale and retail power customers on whose behalf the potential supplier, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet their reliable electricity needs.

[49] July 8 Order, 108 FERC ¶ 61,026 at P 65.

[50] *Id.* at P 66.

facilities as ownership of those facilities.[51] In short, if a seller has control over certain capacity such that the seller can affect the ability of the capacity to reach the relevant market, then that capacity should be attributed to the seller when performing the generation market power screens.[52] The capacity associated with contracts that confer operational control of a given facility to an entity other than the owner must be assigned to the entity exercising control over that facility, rather than to the entity that is the legal owner of the facility.[53]

48. In recent years, some owners have turned to third parties to manage the day-to-day activities of running and dispatching plants and/or selling output. Such third-party contractors, often referred to as energy managers and/or asset managers, can be responsible for multiple facilities through multiple energy management agreements. These management agreements may, directly or indirectly, transfer control of the capacity. The Commission is concerned that there may be instances where, in effect, control of capacity has changed hands, but this capacity has not been attributed to the correct seller for purposes of calculating our market screens.

49. In cases examining whether an entity is a public utility, the Commission has examined the totality of the circumstances in evaluating whether the entity effectively has control over capacity that it manages.[54] Likewise, in providing guidance regarding events that trigger a requirement to submit a notice of change in status, the Commission has indicated that, to determine whether control has been acquired, sellers should examine whether they can affect the ability of capacity to reach the relevant market.[55] Although this analysis is inherently fact-dependent to some degree, the Commission is interested in providing greater certainty and clarity in this area, which should increase the uniformity in reporting capacity and reduce the possibility of tariff violations. The Commission therefore seeks comment on whether it should make certain generic findings, or create certain generic presumptions, regarding the indicia of control. Specifically, the Commission seeks comment on whether any of the following functions should merit a finding or presumption of control and, if so, on what basis: directing outages, fuel procurement, plant operations, energy and capacity sales, and/or credit and liquidity decisions. Alternatively, rather than focusing on these discrete items, should the Commission establish a presumption of control for any entity that has some discretion over the output of the plant(s) that it manages? Would such an approach promote greater certainty and better align the test with the ultimate goal of attributing plant capacity to those who control its output? If the Commission adopted such a presumption, how should it address instances where discretion over plant output may be shared between more than one party? We also propose to clarify that, in the event we adopt any such presumptions, the Commission would nonetheless allow individual sellers to rebut the presumption on the basis of their particular facts and circumstances.

50. The Commission also proposes to clarify that an entity (such as an asset manager or other such entity) that controls generation from which jurisdictional power sales are made is required to have a rate on file with the Commission. If the rate authority sought is market-based rate authority, then that entity is subject to the same conditions and requirements as any other like seller (*e.g.*, the entity must provide a horizontal and vertical market power analysis and include in its horizontal analysis all assets it owns or controls in the relevant market). If such an entity controls an asset from which jurisdictional power sales are being made and such entity does not have a rate on file, it is violating section 205 of the FPA.[56] We wish to emphasize, however, that our intent is not to limit or stifle the provision of energy management services. These services can provide benefits to customers and the marketplace. Rather, our intent is to provide greater certainty and clarity as to when such arrangements confer control so that the capacity being controlled is properly reported and the entity assuming such control has received the necessary authorizations under the FPA for providing jurisdictional services.

d. Relevant Geographic Market.

51. The Commission proposes to continue to use its current approach with regard to the relevant geographic market. The default relevant geographic market is the control area where the seller is physically located and the control areas directly interconnected to that control area (with the exception of a generator interconnecting to a non-affiliate owned or controlled transmission system, in which case the relevant market is only the control area in which the seller is located). The Commission also proposes to continue to designate the RTO/ISO in which a seller is located and is a member as the default relevant geographic market for RTO/ISOs with sufficient market structure and a single energy market, and not require sellers to consider, as part of the relevant market, markets first-tier to the RTO/ISO in which the seller is located and is a member.[57] We believe that designating a default relevant geographic market provides sellers and intervenors a measure of certainty regarding the relevant market. We note that the default market seems to be acceptable to most sellers as there have been relatively few sellers who have proposed to expand or contract the default relevant geographic market.

52. We note that the North American Electric Reliability Council (NERC) no longer uses the designation of control area since it approved the ''NERC Reliability Functional Model'' on February 10, 2004. We seek comment as to whether or not the adoption of the NERC functional model should change the criteria for specifying the default relevant geographic market, and if so, in what way it should be specified and how readily available is the relevant data.

53. The Commission proposes to continue to provide flexibility by

[51] *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 at 61,777 (1989) (*Citizens Power*). *See also Bechtel Power Corp.*, 60 FERC ¶ 61,156 (1992) (finding that an entity that was contractually engaged to provide operation and maintenance services was not an ''operator'' of jurisdictional facilities because the entity did not ''operate'' the facilities at issue but rather, in essence, was functioning merely as the owner's agent with respect to the operation of the jurisdictional facilities); *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶ 61,265 at P 33–36 (2003) (*D.E. Shaw*) (finding that a power marketer's ''investment adviser'' affiliate was a public utility where it had sole discretion to determine the trades to be entered into by the power marketer, as well as the power to execute the contracts, and therefore operated jurisdictional facilities rather than acted as merely an agent of the owner); *R.W. Beck Plant Management, Ltd.*, 109 FERC ¶ 61,315 at P 15 (2004) (*R.W. Beck*) (finding R.W. Beck Plant Management, Ltd. (Beck) was a public utility subject to the FPA in connection with its activities as manager of public utility Central Mississippi Generating Company, LLC because Beck effectively governed the physical operation of certain jurisdictional transmission and interconnection facilities and served as the decision-maker in determining sales of wholesale power).

[52] July 8 Order, 108 FERC ¶ 61,026 at P 65.

[53] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 FR 8253 (Feb. 18, 2005), FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,175 at P 47, *order on reh'g*, Order No. 652–A, 111 FERC ¶ 61,413 (2005).

[54] *D.E. Shaw,* 102 FERC ¶ 61,265 at P 33–36; *R.W. Beck,* 109 FERC ¶ 61,315 at P 15.

[55] Order No. 652, FERC Stats. & Regs. ¶ 31,175 at P 47.

[56] 18 U.S.C. 824d (c) (2000).

[57] April 14 Order, 107 FERC ¶ 61,018 at P 187.

allowing sellers and intervenors to present evidence that the market is smaller or larger than the default market. To that end, we propose to provide guidance regarding the demonstration that a relevant geographic market is larger than a default geographic market by identifying the types of factors the Commission will consider in evaluating whether to adopt an expanded geographic market in a particular case instead of relying on the default geographic market (generally, the control area).

54. Reaching beyond the default market in which an entity is located can mean addressing additional physical and other challenges than when trading within that market. When assessing an expanded geographic market pursuant to the horizontal analysis, the Commission looks for assurance that no frequently recurring physical impediments to trade exist within the expanded market that would prevent competing supply in the expanded area from reaching wholesale customers. Any proposal to use an expanded market (*i.e.*, a market other than the default geographic market) should include a demonstration regarding whether there are frequently binding transmission constraints during historical seasonal peaks examined in the screens and at other competitively significant times that prevent competing supply from reaching the customers within the expanded market. In this regard, we propose to require that a demonstration be made based on historical data. In addition, we would require that a sensitivity analysis be performed analyzing under what circumstance(s) transmission constraints would bind.

55. The Commission also considers whether there is other evidence that would support the existence of an expanded market. In deciding whether customers may be considered as part of an expanded geographic market, the Commission will also consider evidence that they can access the resources outside of the default geographic market on similar terms and conditions as those inside the default geographic market.

56. Such evidence submitted to show that the applicant's customers have access to resources outside of their control area at terms and conditions similar to those at which they can access resources inside the control area could be empirical or it could point to factors that indicate a single market. For example, the Commission has previously stated that the operation of a single central unit commitment and dispatch function for the proposed geographic market would be an indicator of a single market. However, there are other ways to demonstrate that two or more control areas are indeed a single market. For example, other evidence of a single market could include a demonstration that: there is a single transmission rate; there is a common OASIS platform for scheduling transmission service across separate control areas; there is a correlation of price movements between the areas being considered as an expanded geographic market or other information regarding wholesale transactions in the proposed single market. Evidence of active trading throughout the proposed geographic market would also be considered.

57. In determining whether two or more control areas are a single market the Commission would weigh, on a case-by-case basis, all the factors presented. As discussed above, there are several factors the Commission would consider once it has been established that historically there were no physical impediments to trade, and no one factor or factors would be dispositive. Rather, all factors will be considered and as a whole will indicate whether there exists a single market.

58. We seek comment on our proposed guidance and, in particular, whether there are other factors the Commission should consider when assessing a proposed expanded market. Are there any factor(s) that should be given more weight or are essential in determining the scope of the market (*e.g.*, are there any factors that, if not satisfactorily addressed, would preclude the need to consider any other factors)? Should the Commission apply the same criteria when determining whether the geographic market is smaller than the default geographic market?

59. In addition, as discussed previously, the Commission proposes to designate the RTO/ISO in which the seller is located and is a member as the default relevant geographic market for RTO/ISOs with sufficient market structure and a single energy market. We believe the added protections provided in structured markets with market monitoring, market power mitigation and transparency generally result in a market where attempts to exercise market power would be sufficiently mitigated.

60. In the April 14 Order, the Commission identified PJM, ISO–NE, NYISO, and CAISO as meeting the criteria for being considered a single market for purposes of performing the generation market power screens.[58] The Commission also stated that, applicants can incorporate the mitigation they are subject to in ISO/RTO markets as part of their market power analysis. For example, if a market power study showed that an applicant had local market power, the applicant could point to RTO mitigation rules as evidence that this market power has been adequately mitigated. In a later order,[59] the Commission found that the Midwest ISO also met the criteria for being considered a single market for purposes of performing the generation market power screens.

61. However, our experience with corporate mergers and acquisitions indicates that these same RTOs have, at times, been divided into smaller submarkets for study purposes because frequently binding transmission constraints prevent some potential suppliers from selling into the destination market.[60] Therefore, the Commission seeks comment on its approach under the market-based rate program of considering the entire geographic region under control of the RTO/ISO, with a sufficient market structure and a single energy market, as the default relevant geographic market for the horizontal market power analysis. In particular, should the Commission continue its approach of considering the entire geographic region as the default relevant market? Should the Commission consider the entire geographic region for purposes of the indicative screens but consider RTO/ISO submarkets for purposes of the DPT. In addition, should the Commission adopt general criteria to define submarkets? If so, what criteria should the Commission adopt?

62. Lastly, if the Commission determines that an RTO/ISO submarket is the appropriate default geographic region in a particular case and an applicant is found to have market power within that submarket, should the Commission consider mitigation in addition to existing RTO market monitoring and mitigation?

e. Use of Historical Data.

63. We propose to retain the ''snapshot in time'' approach for the screens, *i.e.*, sellers must use the most recently available unadjusted 12 months' historical data.[61] Historical

[58] *Id.* at 187.

[59] *Alliant Energy Corporate Services, Inc.,* 109 FERC ¶ 61,289 at P 31 (2004).

[60] Examples of these submarkets include ISO–NE's Southwest Connecticut, NYISO's East of Central East (Zones F through K), PJM-East (roughly New Jersey, Southeastern Pennsylvania and the Delmarva Peninsula), Midwest ISO excluding Wisconsin-Upper Michigan (WUMS), and CAISO's SP15.

[61] In accordance with the proposed filing schedule discussed below, data for the indicative

data are more objective, readily available, and less subject to manipulation than future projections; therefore, the Commission will continue to preclude adjustments to historical data with regard to the indicative screens, with the following exception. We propose to continue to permit sellers to make adjustments to data that are necessary to perform the screens provided that the applicant fully justifies the need for the adjustments, justifies the methodology used, provides all workpapers in support, and documents the source data. For example, an adjustment could be allowed where needed data is available only for a region that is not identical to the seller's control area in order to put it in a form that can be used in the analysis as designed.[62]

64. However, we propose in the DPT analysis to allow applicants and intervenors to account for changes in the market that are known and measurable at the time of filing.[63] This proposal mirrors the Commission's approach in connection with its merger analysis. In Order No. 642, we stated that we intend to consider current and reasonably foreseeable regional developments as part of our merger analysis. In the Merger Policy Statement, we adopted the U.S. Department of Justice/Federal Trade Commission Horizontal Merger Guidelines[64] as the analytical framework for analyzing the effect on competition. Those guidelines ''address the issue of changing market conditions by stating that '[t]he Agency will consider reasonably predictable effects of recent or ongoing changes in market conditions in interpreting market concentration and market share data.' ''[65] Examples of known and measurable changes in the market that would be allowed include new long-term contracts, expiration of long-term contracts, planned and imminent plant deactivations/retirements, and planned and imminent plant additions, regardless of ownership. Sellers who elect to adjust historical data to reflect known and measurable changes would be required to perform the analysis using the most recent historical data and then provide a sensitivity analysis including adjustments for all known and measurable changes in the market and not just those advantageous to the seller.[66] Applicants and intervenors proposing known and measurable changes to be considered in the DPT analysis will bear the burden of proof for their adjustments to historical data. We seek comments on whether the Commission should provide a limitation on the time period past the historical test period for which sellers can account for changes, what that time period should be, and how flexible or inflexible that limitation should be. In addition, we seek comments on exactly what types of changes should be allowed and under what circumstances.[67]

f. Reporting Format.

65. As suggested by a commenter, we propose to require all sellers to submit the results of their indicative screen analysis in a uniform format to the maximum extent practicable. This format will promote consistency and will aid the Commission in the decision-making process. Sellers must cross reference the inputs with the data and workpapers they otherwise submit including those in accordance with Appendix G of the April 14 Order. Use of a uniform format for reporting results is not intended to limit other workpapers the seller may wish to submit. The format we propose to adopt can be found in Appendix C. We seek comments on this proposal.

g. Exemption for New Generation (Section 35.27(a) of the Commission's Regulations).

66. Section 35.27(a) of the Commission's regulations states:

> Notwithstanding any other requirements, any public utility seeking authorization to engage in sales for resale of electric energy at market-based rates shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity for which construction has commenced on or after July 9, 1996.[68]

67. The Commission clarified in the April 14 Order that some sellers with capacity built after July 9, 1996 (section 35.27(a) exemption) may avoid submitting a horizontal market power analysis if they meet the requirements of section 35.27(a) of the Commission's regulations. The Commission stated that, as it indicated in Order No. 888, it will consider whether a seller citing section 35.27(a) nevertheless possesses horizontal market power if specific evidence is presented by an intervenor, and a seller still must study whether its new capacity, when added to existing capacity, raises horizontal market power concerns.[69] As the Commission stated in Order No. 888, the evaluation of market-based rates for existing capacity will include consideration of new capacity.[70]

68. Under current procedures, if all the generation owned or controlled by an applicant for market-based rate authority and its affiliates in the relevant control area is new generation, such applicant is not required to provide a horizontal market power analysis because of the exemption under section 35.27(a).[71]

69. Although we remain committed to encouraging new entry of generation, we are concerned that the continued use of the section 35.27(a) exemption may become too broad. Over time, this exemption would encompass all market participants as all pre-July 9, 1996 generation is retired. For this reason, some commenters suggest that the Commission should eliminate the exemption altogether.[72]

70. We agree with these commenters that our current practice will have unintended adverse consequences over time and therefore should be reformed. Accordingly, we propose to eliminate the express exemption provided in section 35.27(a), but to do so in a manner that will not act as a disincentive for the construction of new generation. As explained further below, this change will not affect many sellers, given that they already are required to include all new capacity when submitting a market analysis for their pre-1996 generation. Further, our proposal will assure that all generation is treated on an equal footing, such that market participants with similar market shares in the same geographic market are not treated differently based solely on the vintage of their assets.

71. Under this proposal, the Commission would require that all new applicants seeking market-based rate authority on or after the effective date of

screens must track the calendar year previous to the year designated for filing.

[62] July 8 Order, 108 FERC ¶ 61,026 at P 119.

[63] *See* 18 CFR 35.13(a) (2005).

[64] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines (1997) (DOJ/FTC Guidelines).

[65] *Oklahoma Gas and Electric Company and NRG McClain LLC,* 105 FERC ¶ 61,297 (2003) (*OG&E*), *citing* the DOJ/FTC Guidelines, § 1.521.

[66] *See Western Resources, Inc.,* 65 FERC ¶ 61,106 (1993).

[67] For example, in *OG&E,* the Commission accepted one change as known and measurable and rejected another. Specifically, the Commission found that the expiration of a long-term power sales contract within a year was a known and measurable change and should be part of the base case analysis (105 FERC ¶ 61,297 at P 33). In the same order, the Commission found that an upgrade of a transmission facility that was identified by the Southwest Power Pool as a persistent limiting facility, but was not under construction or even in the planning stage, was not ''a foreseeable and reasonably certain change in the market'' and therefore should not be part of the base case analysis (*id.* at P 32).

[68] 18 CFR 35.27(a) (2005).

[69] April 14 Order, 107 FERC ¶ 61,018 at P 115, 116.

[70] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,657.

[71] April 14 Order, 107 FERC ¶ 61,018 at P 38.

[72] American Public Power Association (APPA) Comments (March 15, 2005) at P 35.

the final rule issued in this proceeding, whether or not all of their and their affiliates' generation was built after July 9, 1996, must provide a horizontal market power analysis of their generation. Because the Commission allows an applicant to make simplifying assumptions, where appropriate, and therefore to submit a streamlined analysis, the Commission believes that any additional burden imposed by the proposed elimination of the section 35.27(a) exemption will be minimal.[73]

72. Further, with regard to triennial reviews, the Commission's proposal to eliminate the section 35.27(a) exemption would require that, in its triennial review, a seller must perform a horizontal market power analysis of all of its generation regardless of when it was built, thus eliminating any special treatment of generation built after July 9, 1996. However, as discussed above, because the Commission allows for a streamlined analysis, including simplifying assumptions, where appropriate, any additional burden imposed by the proposed elimination of the section 35.27(a) exemption will be minimal. In addition, the Commission anticipates that those entities that otherwise would have relied on the exemption will, in most cases, qualify as Category 1 sellers and thus no longer be required to file triennial reviews.

73. By proposing to eliminate the express exemption set forth in section 35.27(a), we are not proposing to require sellers with market-based rate authority to submit a new horizontal market power analysis (*i.e.*, perform the generation market power screens) each time that they add a new generating unit. Rather, a seller with market-based rate authority would be required to file a ''change in status'' report under Order No. 652 notifying the Commission of the acquisition of additional generation,[74] the same requirement that exists today. Such sellers are not required to file a market power analysis of their generation with their change in status filing, nor do we propose they should.[75]

74. Thus, our proposal to eliminate section 35.27(a) should not impose significant additional burdens on new generation or otherwise deter new entry. We seek comments on this proposal.

h. Nameplate Capacity.

75. Based on our experience, we propose to allow sellers the option of using seasonal capacity instead of nameplate capacity as currently required. The seller must be consistent in its choice and use one or the other measure of capacity ratings throughout the analysis. The use of seasonal capacity ratings we believe more accurately reflects the seasonal real power capability and is not inconsistent with industry standards, and therefore it may be more convenient for sellers to acquire and compile the associated data. In addition, we do not think the use of such ratings will materially impact results. We seek comment on this proposal, including comment as to whether this information is publicly available to all market participants.

i. Transmission Imports.

76. We propose to continue our use of limiting capacity that can be imported into a relevant market to the results of a simultaneous transmission import capability study, and to reaffirm several aspects of the requirements regarding how to properly construct a simultaneous transmission import capability study for use in the indicative screens and the DPT.

77. The simultaneous transmission import capability study is intended to provide a reasonable simulation of historical conditions. In particular, the simultaneous transmission import capability study is not the theoretical maximum import capability or a best import case scenario. It is a benchmark of historical operating conditions and practices of the applicable transmission provider (*e.g.*, modeling the system in a reliable and economic fashion as it would have been operated in real time). The analysis should not deviate from OASIS practice during each historical seasonal peak. Appendix E of the April 14 Order states that the power flow cases should represent the transmission provider's tariff provisions and *all* firm/network reservations held by seller/affiliate resources during the most recent seasonal peaks. We propose to reaffirm that ''all'' means both short- and long-term firm/network reservations.

78. In addition to the power flow cases, as noted in Appendix E of the April 14 Order, the seller must supply supporting documentation, and this documentation should include the operational practices historically used, reliability margins, and all firm/network reservations held by the seller or its affiliates that are modeled in the cases. The simultaneous transmission import capability study must reasonably reflect the transmission provider's OASIS practices and the techniques used must have been historically available to customers. We propose to continue to use the instructions set forth in the April 14 Order.

79. Further, the April 14 Order required simultaneous transmission import capability studies to include firm point-to-point and network transmission reservations. Firm/network reservations should be subtracted from the simultaneous transmission import capability if they are not historically modeled in the power flow case. In all cases, sellers are required to provide documentation of the firm/network reservations.

80. We expect control area operators with market-based rate authority to provide simultaneous transmission import capability studies in a timely manner, consistent with the methodology described in the April 14 Order, for their control area and directly interconnected first-tier control areas in response to requests by sellers seeking market-based rate authority.[76] This includes all the required data, documentation and workpapers to support the study.

81. We also propose to reaffirm certain aspects of an approximation explained in Appendix E of the April 14 Order. The April 14 Order allows directly interconnected first-tier control areas (to the market being studied) to be considered when conducting the study. However, it does not allow control areas that are second tier to the control area being studied to be considered.

82. We propose to specify how the calculation of a seller's pro rata share of simultaneous transmission import capability should be performed. When studying its first-tier control area, the seller should allocate imports (after taking into account firm reservations by attributing them to the holders of the reservations including those applicable to the seller) pro rata between the seller and its competitors based on

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[73] April 14 Order, 107 FERC ¶ 61,018 at P 117. In the April 14 Order, the Commission explained that appropriate simplifying assumptions are those assumptions that do not affect the underlying methodology utilized by the generation market power screens. For example, if an applicant passes our generation market power screens by only considering the control area market's host utility as a competitor, the Commission foresees no benefit from completing a study to include other competitors. Similarly, if an applicant would pass the screens without considering competing supplies from adjacent control areas, the applicant need not include such imports in its studies. With regard to a new generator, such an applicant may base its horizontal market power analysis on the most recently approved study for the control area in which it is located.

[74] *Order No. 652, FERC Stats. & Regs. ¶ 31,175* at P 68. The threshold of additional generation that triggers the reporting requirement is a net increase of 100 MW or more. *See* Order No. 652–A, 111 FERC ¶ 61,413 at P 24–25.

[75] Further, in the event the seller acquires existing generation, it may also need to seek approval therefor consistent with the provisions of section 203 of the FPA as amended. 16 U.S.C. 824b (2000). Energy Policy Act of 2005 §§ 261 *et seq.*, Pub. L. 109–58, 199 Stat. 594 (2005) (EPAct 2005).

[76] July 8 Order, 108 FERC ¶ 61,026 at P 124.

uncommitted capacity. We seek comments on this proposal.

j. Procedural Issues.

83. The Commission notes that Order No. 662 [77] issued June 21, 2005, addressed concerns that CEII claims in market-based rate filings are overbroad. In response to commenters' concerns that intervenors should have sufficient time to respond to market-based rate filings for which CEII is claimed, the Commission stated that it is willing to consider on a case-by-case basis requests for extensions of time to prepare protests to market-based rate filings where an intervenor demonstrates that it needs additional time to obtain and analyze CEII. The Commission encouraged the parties in cases in which CEII is filed to promptly negotiate a protective order in the proceeding governing access to the CEII, or privately negotiate for the submitter to provide the data to interested parties pursuant to an appropriate non-disclosure agreement. The Commission seeks comments on whether CEII designations remain a concern since issuance of that rule. The Commission also seeks comments regarding whether the comment period (generally 21 days from the date of filing) provided for parties to file responses to the indicative screens and DPT analyses is sufficient. If the Commission were to establish a longer period for submitting comments in these cases, what would be an appropriate comment period?

B. Vertical Market Power

84. The Commission historically has considered transmission market power and other barriers to entry as two separate parts of the four-prong market-based rate analysis. However, as discussed below, the examination of a seller's ability to engage in transmission market power and a seller's ability to exclude competitors from the market by erecting other barriers to entry through the control of inputs to electric power production both involve the evaluation of potential vertical market power. On this basis, in this NOPR the Commission proposes to reformulate its market-based rate analysis to consider issues relating to transmission market power and other barriers to entry under the heading ''vertical market power.'' This proposal is intended primarily to alter the way in which we characterize these issues, rather than changing the fundamental nature of the analyses that we perform.

1. Current Policy

Transmission

85. To the extent that a market-based rate seller, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission has required the seller to have an OATT on file before granting market-based rate authorization. The OATT was implemented in 1996 when the Commission issued Order No. 888 to remedy undue discrimination or preference in access to the monopoly owned transmission grid. Having a Commission-approved OATT on file satisfies the Commission's concerns with regard to transmission market power. In addressing our transmission market power concerns, a seller, including its affiliates, that does not own, operate or control transmission facilities should make an affirmative statement that neither it, nor any of its affiliates, owns, operates or controls any transmission facilities.[78]

86. The Commission issued a Notice of Inquiry in *Preventing Undue Discrimination and Preference in Transmission Services*,[79] that seeks to explore whether, and if so, which, reforms are necessary to the Order No. 888 *pro forma* OATT and to the individual public utility OATTs, given the current state of the electric industry, the complaints of customers regarding remaining undue discrimination, and the apparent uncertainties and inconsistent application concerning various tariff provisions that have arisen since implementation of Order No. 888. The Commission is issuing a notice of proposed rulemaking in that proceeding concurrently with this NOPR.

Other Barriers to Entry

87. Although the principal barriers to entry can be raised through the ownership or control of transmission facilities, the Commission also evaluates barriers to entry other than transmission (other barriers to entry). In the early 1990s, the Commission considered whether a seller or its affiliates could erect other barriers to entry through ownership or control of sites for new capacity development, key inputs to generation, or the transportation of key inputs to generation.[80] The Commission has also considered other barriers to entry, such as: control of major engineering and consulting firms,[81] control of fuel supplies, ownership or control of equipment,[82] and the control of transportation or distribution of fuel supplies in the relevant markets.[83]

88. In particular, the Commission considered such things as a power producer's ownership of building sites and its affiliation with or ownership of interstate natural gas pipelines, engineering and construction firms, or local natural gas distribution systems. For example, in *Wallkill,* the Commission determined that affiliation with a major engineering and construction firm could not be used to erect barriers to entry because there were a large number of such firms operating on a national basis. Further, in *LG&E,* the Commission found that although LG&E did not own facilities used to transport natural gas, its affiliate owned gas lines and gas storage facilities. In light of this, the Commission stated that should LG&E or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for gas services to a potential electric competitor, the electric competitor could file a complaint with the Commission. The Commission has made similar findings in subsequent cases where a seller or its affiliates own or control any natural gas intrastate facilities or distribution facilities, stating that should such seller or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for fuel or services to a potential electric competitor in bulk power markets, then the competitor may file a complaint with the Commission that could result in the suspension of the seller's authority to sell power at market-based

[77] Critical Energy Infrastructure Information, Order No. 662, 70 FR 37031 (June 28, 2005), FERC Stats. & Regs. ¶ 31,189 (June 21, 2005).

[78] *See, e.g., Citizens Power,* 48 FERC ¶ 61,210.

[79] *See Preventing Undue Discrimination and Preference in Transmission Service*, 70 FR 55796 (Sept. 23, 2005), FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 35,553 (2005) (OATT Reform Rulemaking).

[80] *See Doswell Limited Partnership*, 50 FERC ¶ 61,251 at 61,758 (1990) (*Doswell*); *Commonwealth Atlantic Limited Partnership*, 51 FERC ¶ 61,368 at 62,244–45 (1990) (*Commonwealth Atlantic*), cited in *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at n.85 (1992) (*Entergy MBR I*).

[81] *See Wallkill Generating Company, L.P. (Wallkill*), 56 FERC ¶ 61,067 (1991).

[82] *See Louisville Gas and Electric Company*, 62 FERC ¶ 61,016 at 61,147 (1993) (*LG&E*); *Entergy MBR I*, 58 FERC at 61,759; *Pacific Gas and Electric Company*, 53 FERC ¶ 61,145 at 61,505 (1990).

[83] In *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 at 62,405 (1993), *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994), the Commission determined that a power marketer may be affiliated with an interstate natural gas pipeline because, under the Commission's requirements, such pipelines must offer open-access services on a non-discriminatory basis. *See also Vantus Energy Corporation*, 73 FERC ¶ 61,099 at 61,316 (1995). In *Idaho Power Company*, 110 FERC ¶ 61,219 at 61,816 (2005), the Commission considered a utility's ownership and control of rail cars to transport coal in its evaluation of the other barriers to entry prong and held that there are many other companies from which rail cars may be leased, and that the total number of cars that the utility could be considered to control (less than 200) was insignificant relative to the total number of such cars.

rates. The Commission has stated it will treat such denials, delays, or requirement of unreasonable terms, conditions or rates for gas service in the same manner as complaints by an electric competitor that an entity has refused to transmit electricity.[84]

2. Proposal

89. As discussed above, the Commission proposes to replace its existing four-prong analysis (generation market power, transmission market power, other barriers to entry, affiliate abuse/reciprocal dealing) with an analysis that focuses on horizontal market power and vertical market power. Accordingly, we propose that issues relating to whether the seller and its affiliates lack transmission market power or whether they can erect other barriers to entry be addressed together as part of the vertical market power part of the analysis.

90. Regarding transmission issues, the current policy is that having a Commission-approved OATT on file is sufficient to mitigate transmission market power. However, the Commission has also recognized that Order No. 888 did not eliminate all potential to engage in undue discrimination and preference in the provision of transmission service.[85] For this and other reasons, the Commission has initiated a Notice of Inquiry to address potential reforms to the current OATT.[86] We believe that any concerns regarding the adequacy of the OATT should be addressed in that proceeding. We therefore will propose to continue to find that a Commission-approved OATT, as modified as a result of the OATT Reform Rulemaking, will adequately mitigate transmission market power.

91. Nevertheless, the finding that an OATT adequately mitigates transmission market power rests on the assumption that individual applicants comply with their OATTs. If they do not, violations of the OATT may be cause to revoke market-based rate authority or to subject the seller to another remedy the Commission may deem appropriate, such as disgorgement of profits or civil penalties.[87] There may be OATT violations in circumstances that, after applying the factors in the Enforcement Policy Statement, merit revocation or limitation of market-based rate authority. However, before the Commission will consider revoking an entity's market-based rate authority for a violation of the OATT, there must be a nexus between the specific facts relating to the OATT violation and the entity's market-based rate authority. The Commission proposes that, if it determines, as a result of a significant OATT violation, that the market-based rate authority of a transmission provider will be revoked within a particular market, each affiliate of the transmission provider that possesses market-based rate authority will have it revoked in that market on the effective date of revocation of the transmission provider's market-based rate authority. We remind sellers that they must abide by the provisions of the OATT if they do not want an adverse impact on their ability to charge market-based rates.

92. The Commission also proposes to continue considering a seller's ability to erect other barriers to entry, but to do so as part of the vertical market power analysis. We propose that, in order for a seller to demonstrate that it satisfies our vertical market power concerns, with respect to other barriers to entry, it must demonstrate that it and its affiliates cannot erect other barriers to entry. In this regard, we propose to continue to require a seller to provide a description of its affiliation, ownership or control of inputs to electric power production (*e.g.,* fuel supplies within the relevant control area); ownership or control of gas storage or intrastate transportation and distribution of inputs to electric power production; and control of sites for new capacity development in the relevant market. We also propose to require sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and that they cannot do so.

93. In addition, the Commission proposes to provide additional regulatory certainty by clarifying which inputs to electric power production the Commission will consider as other barriers to entry in its vertical market power review, and seeks comments on this proposal. The Commission proposes that the analysis continue to include the consideration of ownership or control of sites for development of generation in the relevant market, fuel inputs such as coal facilities in the relevant market, and the transportation, storage or distribution of inputs to electric power production such as intrastate gas storage and distribution systems, and rail cars/barges for the transportation of coal. The Commission also clarifies that applicants need not address interstate transportation of natural gas supplies because such transportation is regulated by this Commission.[88] Our open access regulations adequately prevent sellers from withholding interstate pipeline capacity. Interstate pipelines are required to sell available capacity at the approved maximum rates. In addition, interstate pipeline capacity held by firm shippers that is not utilized or released is available from the pipeline on an interruptible basis. As to the commodity, Congress has found the natural gas market competitive.[89]

94. Several commenters have suggested that a transmission planning and expansion process can ameliorate vertical market power. The Commission is seeking comments on the issues of transmission planning and expansion in the notice of proposed rulemaking in the OATT Reform Rulemaking that is being issued concurrently with this NOPR. We seek comment on whether these planning and expansion efforts under the OATT Reform Rulemaking will address commenters' concerns here.

95. The Commission seeks comment on whether other inputs to electric power production should be considered as potential barriers to entry and, if so, what criteria the Commission should use to evaluate evidence that is presented. We also seek comment on whether the exercise of buyer's market power by the transmission provider should be considered a potential barrier to entry and, if so, what criteria the Commission should use to evaluate evidence that is presented.

C. Affiliate Abuse

96. The fourth prong of the Commission's current market-based rate analysis examines whether there is evidence involving the seller or its

[84] *LG&E,* 62 FERC ¶ 61,016 at 61,148.

[85] In Order No. 2000, the Commission found that ''opportunities for undue discrimination continue to exist that may not be remedied adequately by [the] functional unbundling [remedy of Order No. 888] * * *'' *Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,089 at 31,105 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[86] *See Preventing Undue Discrimination and Preference in Transmission Service,* 70 FR 55796 (Sept. 23, 2005), FERC Stats. & Regs., Proposed Regulations ¶ 35,553 (2005) (OATT Reform Rulemaking). A notice of proposed rulemaking is being issued in that proceeding concurrently with this NOPR.

[87] *See, e.g., The Washington Water Power Company,* 83 FERC ¶ 61,282 (1998).

[88] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation* Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles January 1991–June 1996 ¶ 30,939 (Apr. 8, 1992).

[89] Natural Gas Wellhead Decontrol Act of 1989, Pub. L. 101–60, 103 Stat. 157 (1989); Natural Gas Policy Act of 1978, section 601(a)(1), 15 U.S.C. 3431 (deregulating the wellhead price of natural gas).

affiliates that relates to affiliate abuse or reciprocal dealing.[90] As the Commission has explained, ''[t]he Commission's concern with the potential for affiliate abuse is that a utility with a monopoly franchise may have an economic incentive to exercise market power through its affiliate dealings.'' [91] The Commission stated that potential abuses include such practices as affiliates selling products to a utility with a franchised service territory (franchised public utility) at excessive prices, or a franchised public utility providing inputs to an affiliate at preferentially low prices. Both of these practices are examples of market power that is exercised to the disadvantage of captive customers. The Commission also has explained that there may be a potential for affiliate abuse through means such as the pricing of non-power goods and services or the sharing of market information.

97. The Commission in the past has used two means to ensure that affiliate abuse does not occur: restrictions on sales between a franchised public utility and its affiliates, and requiring a code of conduct that governs the relationship between franchised public utilities and their affiliates.

1. Power Sales Restrictions

a. Current Policy.

98. The Commission currently prohibits power sales at market-based rates between a franchised public utility and its affiliates without first receiving authorization of the transaction under section 205 of the FPA.[92] In order to be granted market-based rate authorization, a franchised public utility and all of its affiliates must include such a prohibition in their market-based rate tariffs unless the Commission has otherwise authorized the seller to transact with its affiliates.

99. The Commission has stated its concern that a franchised public utility and an affiliate may be able to transact in ways that transfer benefits from the captive customers of the franchised public utility to the affiliate and its shareholders.[93] Where a franchised public utility makes a power sale to an affiliate, the Commission is concerned that such a sale could be made at a rate that is too low, in effect, transferring the difference between the market price and the lower rate from captive customers to the ''non-regulated'' affiliated entity. Where an entity makes power sales to an affiliated franchised public utility, the concern is that such sales not be made at a rate that is too high, which would give an undue profit to the affiliated entity at the expense of the franchised public utility's captive customers. The Commission has found that a transaction between two non-traditional utility affiliates (such as power marketers, EWGs, or QFs) does not raise the same concern about cross subsidization because neither has a franchised service territory and therefore has no captive customers. As the Commission has explained, no matter how sales are conducted between non-traditional affiliates, profits or losses ultimately affect only the shareholders.[94]

100. In determining whether to allow power sales affiliate transactions, the Commission, over time, has adopted several methods, all of which have focused on ensuring that captive customers are adequately protected against affiliate abuse. We discuss these below.

101. In *Edgar,* the Commission described three types of evidence that can be used to show that an affiliate power sales transaction is above suspicion ensuring that the market is not distorted and captive ratepayers are protected: (1) Evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers.[95] The Commission stated that when an entity presents evidence regarding a competitive solicitation, the Commission requires assurance that: (1) A competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.[96]

102. In subsequent cases, the Commission expanded on the competitive solicitation prong of *Edgar* and has stated that it must evaluate the bidding process and determine that, based on the evidence, a proposed power sale between affiliates is the result of direct head-to-head competition.[97]

103. The Commission has provided guidelines as to how the Commission will evaluate whether a competitive solicitation process satisfies the *Edgar* criteria. The underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process.

104. In *Allegheny,* the Commission stated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: It is transparent; products are well defined; bids are evaluated comparably with no advantage to affiliates; and it is designed and evaluated by an independent entity.[98] The *Allegheny* guidelines serve as one example of evidence that a competitive solicitation has resulted in just and reasonable rates; they do not constitute the only way in which an applicant could demonstrate that a competitive solicitation was not unduly discriminatory.

105. The Commission has granted blanket authorization to make power sales to affiliates pursuant to a market-based rate tariff subject to certain conditions. For this blanket authorization, the Commission has required that sales of power by a franchised public utility to an affiliate be made at a rate no lower than the rate charged to non-affiliates; the utility offering to sell power to an affiliate must make the same offer, at the same time, to non-affiliated entities; and the utility must post simultaneously the actual price charged to its affiliate for all

[90] *See Commonwealth Atlantic Limited Partnership,* 51 FERC ¶ 61,368 at 62,245 (1990) (discussing potential for reciprocal dealing if a buyer agrees to pay more for power from a seller in return for that seller (or its affiliates) paying more for power from the buyer (or its affiliates)).

[91] *Edgar,* 55 FERC ¶ 61,382 at 62,167 n.56. *See also TECO Power Services Corp. and Tampa Electric Co.,* 52 FERC ¶ 61,191 at 61,697 n. 41 (1990) (''The Commission has determined that self-dealing may arise in transactions between affiliates because affiliates have incentives to offer terms to one another which are more favorable than those available to other market participants.'').

[92] *Aquila, Inc.,* 101 FERC ¶ 61,331 (2002).

[93] *See, e.g., Heartland Energy Services Inc.,* 68 FERC ¶ 61,223 at 62,062 (1994) (Heartland).

[94] *FirstEnergy Generation Corporation,* 94 FERC ¶ 61,177 (2001); *USGen Power Services, L.P.,* 73 FERC ¶ 61,302 at 61,846 (1995).

[95] *Edgar,* 55 FERC ¶ 61,382 at 62,168–69.

[96] *Id.* at 62,168. A seller with market-based rate authority would not necessarily be required to make a separate affirmative showing of no market power in order to fulfill the *Edgar* standards and receive authority to engage in an affiliate transaction.

[97] *See, e.g., Rockland Electric Company,* 102 FERC ¶ 61,097 (2003); *Connecticut Light & Power Company and Western Massachusetts Electric Company,* 90 FERC ¶ 61,195 at 61,633–34 (2000); *Aquila Energy Marketing Corp.,* 87 FERC ¶ 61,217 at 61,857–58 (1999); *MEP Pleasant Hill, LLC,* 88 FERC ¶ 61,027 at 61,059–60 (1999); *Edgar,* 55 FERC ¶ 61,382 at 62,167–69.

[98] *See, e.g., Allegheny Energy Supply Company, LLC,* 108 FERC ¶ 61,082 (2004) (*Allegheny*); *Rockland Electric Company,* 102 FERC ¶ 61,097 (2003); *Conectiv Energy Supply, Inc.,* 91 FERC ¶ 61,076 (2000).

transactions.[99] These provisions were originally included as part of Detroit Edison's cost-based rate tariff in response to a request by Detroit Edison to sell power to its affiliated power marketer at negotiated rates subject to a cost-based price cap. However, the Commission's practice has been to allow such a provision in other sellers' market-based rate tariffs. Utilities that request this blanket authorization have been required to include those conditions in their market-based rate tariffs.[100]

106. The Commission also has authorized sales when a ''non-regulated'' affiliate seeks to sell power to an affiliated franchised public utility where sufficient pricing safeguards were in place to ensure that there was no room for manipulation.[101] In *Advanced Resources*, the Commission found adequate a plan where the power marketer sold energy to its affiliated franchised public utility at the lowest price paid by the franchised public utility to a non-affiliate under certain standard supplier agreements. Specifically, the Commission granted authorization because the price in these standard supplier agreements was equal to the average price of power sold to the franchised public utility through the PJM power exchange. Because the price of the franchised public utility's purchases from the power marketer was set equal to the price of the franchised public utility's purchases from PJM, the Commission concluded there was no room for manipulation.

107. The Commission also has allowed sales between affiliates pursuant to a market-based rate tariff without imposing any price or transaction conditions where there were no captive wholesale or retail customers or where captive customers were adequately protected from affiliate abuse.[102] In these cases, the Commission found that captive customers were protected through fixed rate contracts, retail rate freezes, retail access, and an inability for the captive ratepayer to be harmed through fuel adjustment clauses. The Commission also has found that tying the price of an affiliate transaction to an established, relevant market price or index mitigates affiliate abuse concerns.[103]

b. *Proposal.*

108. We remain concerned about the potential adverse impact that affiliate power sales transactions may have on captive customers[104] and propose to continue our policy of reviewing affiliate transactions under section 205 of the FPA. Although we have traditionally identified affiliate abuse as the fourth prong of our test for market-based rate authority, in practice this prong is not only evaluated at the time an application is filed, but rather is satisified on an ongoing basis through the requirement that sellers obtain prior approval, under the foregoing standards, for affiliate power sales. To reflect and codify this practice, we propose to discontinue referring to affiliate abuse as a separate ''prong'' of our analysis and instead we propose to codify in our regulations at 18 CFR part 35, subpart H, an explicit requirement that any seller with market-based rate authority must comply with the affiliate power sales restrictions and other affiliate provisions.[105] Thus, we will address affiliate abuse by requiring that the conditions set forth in the proposed regulations be satisfied on an ongoing basis as a condition of obtaining and retaining market-based rate authority. However, we note that a seller seeking to obtain or retain market-based rate authority will continue to be obligated to provide a detailed description of its corporate structure so that we can be assured that our standards are being applied correctly. In particular, applicants with franchised service territories will be required to make a showing regarding whether they serve customers and to identify all non-regulated power sales affiliates, such as affiliated marketers and generators.[106]

109. Consistent with the foregoing, we propose to amend the Commission's regulations to include a provision expressly prohibiting power sales between a franchised public utility and any of its non-regulated affiliates without first receiving authorization of the transaction under section 205 of the FPA. Further, we propose that, as a condition of receiving market-based rate authority, sellers must adopt the MBR tariff (included as Appendix A to this NOPR) which includes a provision requiring the seller to comply with, among other things, the affiliate provisions in the regulations. We note that failure to satisfy the conditions set forth in the affiliate provisions will constitute a tariff violation. We seek comments on this proposal.

110. Sellers seeking authorization to engage in affiliate transactions will continue to be obligated to provide evidence to support a determination as to whether there are captive customers that would trigger the application of our standards for affiliate power sales.[107] If the Commission finds, based on the evidence provided by the seller, that the seller has no captive customers, the affiliate provisions in the regulations would not apply. However, if the record does not support a finding of no captive customers, the seller must abide by all affiliate restrictions contained in the regulations in order to obtain and retain market-based rate authority. In the Commission's Final Rule on transactions subject to section 203, the

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[99] *Detroit Edison Co.*, 80 FERC ¶ 61,348 at 62,198 (1997).

[100] *See, e.g., Alliant Services Company*, 85 FERC ¶ 61,344 at 62,335 (1998); *Tucson Electric Power Company*, 82 FERC ¶ 61,141 at 61,525 (1998).

[101] *See, e.g., GPU Advanced Resources, Inc.*, 81 FERC ¶ 61,335 (1997) (*Advanced Resources*); *FirstEnergy Trading & Power Marketing, Inc.*, 84 FERC ¶ 61,214 at 62,037–38, *reh'g denied*, 85 FERC ¶ 61,311 (1998) (rejecting tariffs without prejudice to the applicants submitting alternative proposals that delineate the nature of the transactions to be undertaken and demonstrate that any proposed safeguards mitigate the potential for affiliate abuse).

[102] *See, e.g., Consumers Energy Company*, 94 FERC ¶ 61,180 (2001) (finding there are adequate safeguards including Consumer Energy disallowing revenues for sales to CMS Marketing to be factored into any rate calculations for wholesale customers, existence of retail rate freeze, and phase in of retail choice); *FirstEnergy Corp.*, 94 FERC ¶ 61,182 at 61,630 (2001) (finding of adequate safeguards based on FirstEnergy's commitment to hold wholesale customers harmless from changes in cost, a retail rate freeze in Ohio, and caps on retail rates in Pennsylvania); *Exelon Generation Company, L.L.C.*, 93 FERC ¶ 61,140 at 61,425 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001) (finding there are adequate safeguards including retail access, rate freezes, rate caps, and other mechanisms).

[103] Brownsville Power I, L.L.C., 111 FERC ¶ 61,398 at P 10 (2005) (Brownsville); See also FirstEnergy Trading Servs., Inc., 88 FERC ¶ 61,067 at 61,156 (1999) (FirstEnergy Trading); Union Light, Heat, and Power Co., 110 FERC ¶ 61,212 at P16 (2005) (affirming that use of Midwest ISO Day 2 market prices meets the Edgar test and mitigates concerns regarding transactions between affiliates); Idaho Power Company, 95 FERC ¶ 61,147 (2001) (accepting use of the Dow Jones Mid-Columbia Index and the Dow Jones Palo Verde Index for affiliate sales); Pinnacle West Capital Corporation, 91 FERC ¶ 61,290 (2000) (allowing use of the lesser of the Palo Verde Index and system incremental cost as a cap on the price for sales between affiliates); DPL Energy, Inc., 90 FERC ¶ 61,200 (2000) (affirming that use of the ''into Cinergy'' index price as a price cap for its power sales to Dayton P&L mitigates affiliate abuse concerns); *Ameren Services Company*, 86 FERC 61,212 (1999) (accepting use of ''into Cinergy'' for sales between affiliates).

[104] *See Edgar*, 55 FERC ¶ 61,382 at 62,167.

[105] With regard to reciprocal dealing, we believe that any concerns as to a seller's ability to engage in reciprocal dealing are addressed by the affiliate abuse provisions we propose to include in the Commission's regulations as well as the Commission's final rule prohibiting energy market manipulation. *See Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (January 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006), *order on reh'g,* Order No. 670–A, 114 FERC ¶ 61,300 (2006).

[106] In this regard, the Commission protects captive customers by ensuring that wholesale rates are just and reasonable.

[107] Sellers that have already received authorization to make sales to affiliates would retain that authorization unless the Commission institutes a section 206 investigation to examine whether the seller's current circumstances continue to satisfy our affiliate abuse concerns and subsequently revokes such authorization.

Commission defined the term ''captive customers'' to mean ''any wholesale or retail electric energy customers served under cost-based regulation.'' [108] We seek comment on whether the same definition should be used for purposes of this rule.

111. We propose to continue our past approach for determining what types of affiliate transactions are permissible and the criteria that should be used to make those decisions. When affiliates participate in a competitive solicitation process, application of the *Allegheny* criteria would constitute safe harbor criteria that the affiliate abuse condition is satisfied in a transaction between a franchised public utility and its affiliate. The Commission will consider competitive solicitations, on a case-by-case basis. However, we emphasize that using a competitive solicitation is not the only way an affiliate transaction can address our concerns that the transaction does not pose affiliate abuse concerns.

112. In *Edgar*, two alternatives to competitive solicitation evidence were found to be acceptable evidence of a market price. These alternatives included prices non-affiliates are willing to pay for similar service and benchmark evidence. However, *Edgar* also noted the difficulty of finding such truly comparable alternative evidence.[109] This difficulty in finding adequate comparable evidence increases the likelihood that applications submitted with such evidence could raise issues of material fact and thus could be set for hearing.

113. We continue to believe that tying the price of an affiliate transaction to an established, relevant market price or index such as in an RTO or ISO is acceptable benchmark evidence and mitigates affiliate abuse concerns so long as that benchmark price or index reflects the market price where the affiliate transaction occurs (*i.e.*, is a relevant index).[110] The Commission has stated its belief that the added protections in structured markets with central commitment and dispatch and market monitoring and mitigation (such as RTOs/ISOs) generally result in a market where prices are transparent.[111]

114. Although the Commission has found in the past that certain *non*-RTO price indices are acceptable indicators of market prices, we recognize that price indices at thinly traded points can be subject to manipulation and are otherwise not good measures of market prices, as discussed in the Price Index Policy Statement [112] and November 19 Price Index Order.[113] Accordingly, we propose to allow affiliate transactions based on a *non*-RTO price index only if the index fulfills the requirements of the November 19 Price Index Order for eligibility for use in jurisdictional tariffs.[114] The requirements include the criteria found in the Price Index Policy Statement, including but not limited to [115] reporting of prices by those not involved in trading, and a process for resolving reporting errors, as well as those specific to jurisdictional tariffs: (1) Providing the volume and number of transaction data on which the index value is based (or clearly indicating when no such data is available); (2) confirming that the Commission can have access to relevant data in the event of an investigation of possible false price reporting or manipulation; and (3) establishing minimum criteria to determine whether there is adequate liquidity for daily, weekly, and monthly electricity indices.

115. The Commission seeks comment on whether evidence other than competitive solicitations, RTO price or non-RTO price indices, or benchmarks described above, should be accepted in an application for authority to engage in affiliate power sales.

116. With regard to merging companies the Commission has stated that for the purposes of affiliate abuse, merging companies will be considered affiliates under the market-based rate tariff while their merger is pending.[116] We seek comments regarding at what point the Commission should consider two non-affiliates as merging partners: the date the merger is announced, the date the section 203 application is filed with the Commission, or another time? The Commission proposes to use the date a merger is announced as the triggering event, but we seek comment on this issue.

117. The Commission also proposes that entities that engage in energy/asset management of generation on behalf of a franchised public utility be treated as affiliates of that franchised public utility in a manner similar to that of non-regulated affiliates and be subject to the affiliate provisions we propose herein. The Commission also proposes that entities that engage in energy/asset management of generation on behalf of non-regulated affiliates of a franchised public utility be treated in a similar manner as the non-regulated affiliates. We seek comment on this proposal.

118. The Commission currently requires that sales made under market-based rate tariffs, including those made to affiliates, be reported in an EQR.[117] The Commission affirms that its role with regard to market-based rates, and specifically affiliate transactions, will be to either grant or deny authorization to make affiliate sales. Additionally, the Commission reiterates that, once authorized, all such sales should be reported in an EQR.

119. Although, at one time, the Commission's policy was to require certain market-based rate sellers to file their long-term market-based rate power sales service agreements with the Commission,[118] since the issuance of Order No. 2001, the Commission's policy has been to require that such agreements not be filed with the Commission. Notwithstanding this policy, the Commission on occasion may have accepted long-term service agreements for filing. At this time, the Commission reaffirms that long-term affiliate sales contracts under the seller's market-based rate tariff that are authorized by the Commission shall not be filed with the Commission.[119] However, the seller must make a section 205 filing with the Commission to obtain authorization to engage in an

[108] *Transactions Subject to FPA section 203*, Order No. 669–A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,097 (2006). *See also Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,096 (2006).

[109] *See Edgar*, 55 FERC ¶ 61,382 at 62,169.

[110] *Brownsville*, 111 FERC ¶ 61,398 at P10. *See also Portland General Elec. Co.*, 96 FERC ¶ 61,093 at 61,378 (2001); *FirstEnergy Trading*, 88 FERC ¶ 61,067 at 61,156 (1999).

[111] April 14 Order, 107 FERC ¶ 61,018 at P 189.

[112] *Policy Statement On Natural Gas And Electric Price Indices* 104 FERC ¶ 61,121 (2003) (Price Index Policy Statement).

[113] *Order Regarding Future Monitoring Of Voluntary Price Formation, Use Of Price Indices In Jurisdictional Tariffs, And Closing Certain Tariff Docket* 109 FERC ¶ 61, 184 (2004) (November 19 Price Index Order).

[114] *November 19 Price Index Order*, 109 FERC ¶ 61,184 at P 40–69.

[115] *Price Index Policy Statement*, 104 FERC ¶ 61,121 at P 34.

[116] *Cinergy, Inc.*, 74 FERC ¶ 61,281 (1996); *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,034 (1998); *Central and South West Services, Inc.*, 82 FERC ¶ 61,101 at 61,103 (1998); *Delmarva Power & Light Company*, 76 FERC ¶ 61,331 at 62,582 (1996) (''[T]he self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm's-length bargaining that serves as the primary protection against reciprocal dealing.'').

[117] *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,127 (2002).

[118] *See Southern Company Services, Inc.*, 99 FERC ¶ 61,103 (2002).

[119] 18 CFR 35.1(g) (2005) (''[A]ny market-based rate agreement pursuant to a tariff shall not be filed with the Commission'').

affiliate transaction, and may not engage in such transaction without first receiving such authorization.

2. Market-Based Rate Code of Conduct for Affiliate Transactions Involving Power Sales and Brokering, Non-Power Goods and Services and Information Sharing

a. Current Policy.

120. The Commission requires affiliates of franchised public utilities that request market-based rate authority to submit a market-based rate code of conduct to govern the relationship between the franchised public utility and its affiliates. Historically, the purpose of the market-based rate code of conduct [120] has been to safeguard against affiliate abuse by protecting against the possible diversion of benefits or profits from franchised public utilities (*i.e.*, traditional public utilities with captive ratepayers) to an affiliated entity for the benefit of shareholders. Just as the Commission has expressed concern about the potential for affiliate abuse in connection with power sales between affiliates, it also has recognized that there may be a potential for affiliate abuse through other means, such as the pricing of non-power goods and services or the sharing of market information between affiliates.[121] The market-based rate code of conduct was designed to address these concerns. The Commission has waived the market-based rate code of conduct requirement in cases where there are no captive customers, and thus no potential for affiliate abuse, or where the Commission finds that such customers are adequately protected against affiliate abuse.[122] In such cases, however, the Commission directed the utilities to notify the Commission should they obtain captive customers in the future and expressly reserved the right to reimpose the market-based rate code of conduct requirement. In the Order No. 2004 Standards of Conduct rulemaking proceeding, the Commission solicited comment on whether to reform the market-based rate code of conduct but determined that such reform should take place in a separate proceeding.[123]

121. The market-based rate code of conduct requirements have evolved through market-based rate orders.[124] Beginning with orders issued in 1999, the Commission informed sellers that if an applicant submitted a market-based rate code of conduct that was inconsistent with the market-based rate code of conduct attached to those orders, the Commission would reject it and designate the attachment as the applicable code.[125] The Commission's market-based rate code of conduct provisions state:

Statement of Policy and Code of Conduct With Respect to the Relationship Between [Power Marketer/Power Producer] and [Public Utility]

Marketing of Power

1. To the maximum extent practical, the employees of [Power Marketer/Power Producer] will operate separately from the employees of [Public Utility].

2. All market information shared between [Public Utility] and [Power Marketer/Power Producer] will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but they may not serve as an improper conduit of information to non-support personnel.

3. Sales of any non-power goods or services by [Public Utility], including sales made through its affiliated EWGs or QFs, to [Power Marketer/Power Producer] will be at the higher of cost or market price.

4. Sales of any non-power goods or services by the [Power Marketer/Power Producer] to [Public Utility] will not be at a price above market.

Brokering of Power

To the extent [Power Marketer/Power Producer] seeks to broker power for [Public Utility]:

5. [Power Marketer/Power Producer] will offer [Public Utility's] power first.

6. The arrangement between [Power Marketer/Power Producer] and [Public Utility] is non-exclusive.

7. [Power Marketer/Power Producer] will not accept any fees in conjunction with any Brokering services it performs for [Public Utility].

122. The Commission has also accepted the inclusion of an additional provision to govern brokering activities where a franchised public utility brokers for one of its affiliates.[126]

123. Numerous significant changes have taken place in the electric industry relevant to the market-based rate code of conduct requirement since the Commission approved the first market-based rate codes of conduct in the mid-1990s. The Commission has required open access transmission service in Order No. 888; there has been an increase in the number of power marketers and power producers

[120] The market-based rate code of conduct has at times been confused with the Commission's Standards of Conduct. The electric Standards of Conduct, originally issued in Order No. 889 *et seq.*, were established to govern the relationship between a public utility's transmission function and its wholesale merchant function (including affiliated power marketers) to ensure that all transmission customers have equal access to transmission information. *See Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, 61 FR 21737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, 62 FR 12484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,049 (1997), *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g,* Order No. 889–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000). The Standards of Conduct were recently updated by the Commission. *See Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134 (Dec. 11, 2003), III FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,155 (Nov. 25, 2003), *order on reh'g,* Order No. 2004–A, 69 FR 23562, (Apr. 29, 2004), III FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,161 (April 16, 2004), *order on reh'g,* Order No. 2004–B, 69 FR 48371 (Aug. 10, 2004), III FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,166 (Aug. 2, 2004), *order on reh'g,* Order No. 2004–C, 70 FR 284 (Jan 4., 2005), III FERC Stats. & Regs., Regulations Preambles January 2001–December 2005 ¶ 31,172 (Dec. 21, 2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (March 23, 2005), *appeal docketed sub nom., Natural Gas Fuel Supply Corp.* v. *FERC,* No. 04–1183 (D.C. Circuit).

[121] *See, e.g., Potomac Electric Power Company,* 93 FERC ¶ 61,240 at 61,782 (2000); *Heartland, 68 FERC* ¶ 61,223 at 62,062–63.

[122] *See, e.g., CMS Marketing, Services and Trading Co.,* 95 FERC ¶ 61,308 at 62,051 (2001) (granting request for cancellation of code of conduct where wholesale contracts, as amended, ''cannot be used as a vehicle for cross-subsidization of affiliate power sales or sales of non-power goods and services''); *Alcoa, Inc.,* 88 FERC ¶61,045 at 61,119 (1999) (waiving code of conduct requirement where there were no captive customers); *Green Power Partners 1 LLC,* 88 FERC ¶ 61,005 at 61,010–11 (1999) (waiving code of conduct requirement where there are no captive wholesale customers and retail customers may choose alternative power suppliers under retail access program).

[123] Order No. 2004, at 30,853. The following entities submitted comments in the Standards of Conduct rulemaking proceeding in Docket No. RM01–10–000 relating to the concept of codifying the code of conduct: Cinergy (codification not needed); Entergy (if codified, the code of conduct should reflect established codes); NEPOOL Industrial Customer Coalition (codification needed); LG&E Energy Corporation (separate code of conduct policy issues should be treated in a separate rulemaking); PanCanadian Energy Services, Inc. (codification unnecessary).

[124] Seminal early Commission decisions discussing the purposes of the code of conduct requirements include *Heartland* and *LG&E Power Marketing, Inc.,* 68 FERC ¶ 61,247 at 62,121–24 (1994).

[125] *See, e.g., Northeast Utilities Service Company,* 87 FERC ¶ 61,063 (1999) (requiring market-based rate applicants to submit codes of conduct consistent with an attached code of conduct and imposing the attached code in the event of inconsistency).

[126] *See MEP Investments, LLC,* 87 FERC ¶ 61,209 at 61,828 (1999) (''CP&L has taken the brokering rules established by the Commission for the opposite situation (when the marketer is brokering for the utility), and modified them to apply to its situation. Specifically, instead of the no-fee rule when a marketer brokers for its affiliate, for brokering service CP&L provides to Monroe, CP&L will charge Monroe the higher of CP&L's costs for that service or the market rate for such services. CP&L will also market its own power first, simultaneously make public any information shared with Monroe during brokering, and post on its Internet site the actual brokering changes imposed. This addition to CP&L's code of conduct is accepted.'').

authorized to transact under market-based rates, as well as an increased market for available transmission capacity, an increased number of power transactions, and new and different uses for the transmission grid.[127] The Commission has found that the nature of electric market participants is also changing, with the rise of power marketers and generation facilities that are affiliated with traditional regulated entities, as well as unaffiliated entities.[128]

124. There also has been an increased range of activities engaged in by asset or energy managers.[129] Although asset managers can provide valuable services and thereby benefit consumers and the marketplace, such relationships also could result in transactions harmful to captive customers. We note that, as the consequence of one Commission investigation, there was a settlement agreement pursuant to which a company's market-based rate codes of conduct were revised to expand (a) the range of affiliates to which they applied and (b) the regulation of conduct between affiliates, including the asset manager.[130]

125. While the Commission has required that entities comply with the provisions of the market-based rate code of conduct, the market-based rate code of conduct has not been codified in the Commission's regulations. Further, some applicants for market-based rate authority have requested and received variations from the market-based rate code of conduct. Such variations, while reasonable in individual circumstances, may over time become inconsistent with the Commission's goals of protecting captive customers and fostering transparent and consistent regulation of the market. Likewise, some corporate families have filed several different market-based rate codes of conduct for their affiliates while others have filed only one or have received a waiver of the market-based rate code of conduct requirement.

126. An example of inconsistent market-based rate codes of conduct was revealed in Commission staff's audit of Progress Energy, Inc. In that proceeding, there were eight different codes with differing provisions for different Progress affiliates.[131]

b. Proposal.

127. The Commission continues to believe that a code of conduct is necessary to protect captive customers from the potential for affiliate abuse. Further, in light of the repeal of the Public Utility Holding Company Act of 1935 and the fact that holding company systems may have franchised public utility members with captive customers as well as numerous ''non-regulated'' power sales affiliates that engage in non-power goods and services transactions with each other, it is important that the Commission have in place restrictions to preclude transferring captive customer benefits to stockholders through a company's ''non-regulated'' power sales business. We therefore believe it is appropriate to condition all market-based rate authorizations, including authorizations for sellers within holding companies, on the seller abiding by a code of conduct for sales of non-power goods and services between power sales affiliates.

128. We also believe that greater uniformity and consistency in the codes of conduct is appropriate. With the experience gained over the years in approving various codes of conduct, including our standard code of conduct, we are proposing to adopt a uniform code of conduct to govern the relationship between franchised public utilities with captive customers and their ''non-regulated'' affiliates, *i.e.*, affiliates whose power sales are not regulated on a cost basis under the FPA. We therefore propose to codify such affiliate provisions in section 35.39(b)–(e) of our regulations and to require that, as a condition of receiving market-based rate authority, sellers comply with these provisions. Failure to satisfy the conditions set forth in the affiliate provisions will constitute a tariff violation. This uniformity will help ensure that captive customers are protected and that affiliate provisions are applied and administered in an even-handed manner in harmony with legitimate current industry practices. We seek comment on this proposal and on whether the specific affiliate provisions proposed in this NOPR are sufficient to protect captive customers. In particular, what changes, if any, should the Commission adopt? Additionally, as previously noted, we seek comment on the definition of ''captive customer.''

129. The proposed provisions are the same as those in the standard code of conduct that exists today with the following exceptions. First, the proposed regulations use the term ''non-regulated'' affiliates instead of power marketer/power producer to make it clear that the provisions apply to the relationship between a franchised public utility and any of its affiliates that are not regulated under cost-based regulation. This includes affiliate power marketers and affiliate power producers, such as EWGs and QFs.

130. Second, in the case of companies that are acting on behalf of and for the benefit of franchised public utilities with captive customers, the proposed affiliate provisions treat such companies, for purposes of the affiliate provisions, as the franchised public utility. For example, if a company has been created to manage generation assets for the franchised public utility, such entity is subject to the same information sharing provision as the franchised public utility with regard to information shared with non-regulated affiliates, such as power marketers and power producers.

131. Likewise, in the case of non-regulated affiliates, the proposed affiliate provisions treat companies that are acting on behalf of and for the benefit of non-regulated affiliates, for purposes of the affiliate provisions, as the non-regulated affiliates. For example, asset managers of a non-regulated affiliate's generation assets are treated as the non-regulated affiliate with regard to, for example, the information sharing provision. We seek comment on this proposal.

132. The Commission invites comments proposing other additions, substitutions, or eliminations to the proposed affiliate provisions.

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[127] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134, FERC Stats. & Regs., ¶ 31,155, Regulations Preambles January 2001–December 2005.

[128] *Id.* As of April 1, 2006, approximately 1170 entities have market-based rate authority granted by the Commission. They include approximately 390 independent power marketers, 70 traditional utilities with market-based rate authority, 100 affiliated power marketers, 400 affiliated power producers, 180 independent power producers and 30 financial institutions.

[129] Kevin Heslin, *A few thoughts on the industry: Ideas from session at Globalcon,* Energy User News, July 1, 2002, at 12 (Noting that prior to deregulation, ''an energy manager had relatively straightforward tasks: understanding applicable tariffs, evaluating the possible installation of energy conservation measures (ECMs), and considering whether to install on-site generation'' but that ''now, an energy manager has to be conversant with a far greater number of issues'' such as complex legal issues and financial instruments like derivatives.)

[130] In 2003, as part of a Settlement Agreement with the Commission, Cleco Corp. agreed to an expansion of its codes of conduct governing relations between its various affiliates that Enforcement staff alleged had participated in power sales and related conduct in violation of the Standards of Conduct and Cleco's previous codes of conduct. *Cleco Corp.,* 104 FERC ¶ 61,125 (2003). Pursuant to the terms of the resulting settlement agreement, Cleco submitted revised codes that governed information sharing and independent functioning between Cleco's three exempt wholesale generators (with market-based rate authority), its power marketer that in essence acted as an asset manager for the three, and its captive ratepayer utility, rather than merely code provisions governing relations between, on the one hand, the captive ratepayer utility, and, on the other, the marketing and generation affiliates.

[131] *See Florida Power Corp.,* 111 FERC ¶ 61,243 (2005), attached staff Audit Report at 6.

D. Mitigation

1. Current Policy

133. The Commission began accepting applications for market-based power sales in the late 1980s as a means to provide greater flexibility to transactions in emerging competitive wholesale power markets. The analysis for horizontal market power at that time was the ''hub and spoke'' methodology, and under that methodology most sellers received market-based rate approval. If, however, a seller failed the hub and spoke analysis for a particular market, as a general matter, no specific mitigation was imposed. Rather, the seller could continue to sell power under existing cost-based rate schedules on file with the Commission in that area.

134. The Commission began providing greater flexibility in setting cost-based rates for coordination sales during this period as well. Historically, utilities had set the rate for coordination sales on a ''split the savings'' formula [132] or on the incremental cost of the units participating in the sale (plus an adder). In the late 1980s, however, the Commission began to approve a variety of ''up to'' rates under which the applicant could charge a rate that was anywhere between a ''floor'' of incremental cost and a ''ceiling'' of variable energy costs plus an embedded cost demand charge. Examples of this more flexible approach were the Western Systems Power Pool, Inc. agreement, under which all sellers in the Western Interconnect could transact under a common ceiling rate. The Commission also provided significant flexibility to individual sellers, such as by allowing them to cap rates at the cost of the most recently installed unit, even if that unit was a high-cost baseload unit.

135. This more flexible approach to wholesale power sales continued largely unchanged until 2001 when the Commission adopted the supply margin assessment (SMA) test.[133] The SMA sought to strengthen the horizontal market power test in several significant ways, such as considering transmission capability to limit the amount of competitive supplies that could get into the relevant market. Although not imposing a cost-based rate for longer term transactions, the SMA developed a ''must offer'' requirement and a ''split the savings'' formula in the event that a seller failed the generation market power test, which was the traditional cost-based ratemaking model used for spot market energy sales.

136. In the April 14 and July 8 Orders, the Commission replaced the SMA test with two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen, and modified the Commission's approach to cost-based mitigation.

137. In the April 14 Order, the Commission adopted default mitigation tailored to three distinct products: (1) Sales of power of one week or less will be priced at the seller's incremental cost plus a 10 percent adder; (2) sales of power of more than one week but less than one year will be priced at an embedded cost ''up-to'' rate reflecting the costs of the unit(s) expected to provide the service; and (3) sales of power for one year or more will be priced at an embedded cost of service basis and each such contract will be filed with the Commission for review and approved prior to the commencement of service. The Commission determined that sellers that are found to have market power (*i.e.*, after the Commission has ruled on the DPT analysis), or that accept a presumption of market power, may either accept the Commission's default cost-based mitigation measures or propose their own case-specific measures tailored to their particular circumstances that eliminate their ability to exercise market power, including adopting existing cost-based rates, but did not provide guidance as to which departures from the default mitigation would be approved.[134]

2. Proposal

138. We seek comment on whether the default mitigation set forth in the April 14 Order is appropriate as currently structured. In particular, certain recurring issues have arisen in implementing the cost-based mitigation and we seek comment on these issues. Specifically, we seek comment, as discussed further below, on four issues of recurring significance: (i) The rate methodology for designing cost-based mitigation; (ii) discounting; (iii) protecting customers in mitigated markets; and (iv) sales by mitigated sellers that ''sink'' in unmitigated markets.

a. Cost-Based Rate Methodology.

139. We first seek comment on issues associated with the rate methodology for designing cost-based mitigation. There are two principal issues concerning rate methodology that have arisen in implementing the April 14 Order. The first relates to the requirement that sales of less than one week be made at incremental cost plus 10 percent. Sellers have argued that this is a departure from the Commission's historical acceptance of ''up to'' rates for short-term energy sales, including sales of less than one week. We seek comment on whether to continue to apply a default rate for sales of less than one week that is tied to incremental cost plus 10 percent. Are there problems associated with using ''up to'' rates for shorter-term sales and, if so, what are they? Does the current approach provide utilities a disincentive to offer their power to wholesale customers in their local control area for short-term sales? Would an ''up to'' rate adequately mitigate market power for such sales?

140. The second rate methodology issue relates to the design of an ''up to'' cost-based rate. In the past, the Commission has allowed significant flexibility in designing ''up to'' rates. Is that flexibility still warranted? For example, there are often disputes over which units are ''most likely to participate'' or ''could participate'' in coordination sales. Should the Commission continue to allow utilities flexibility in selecting the particular units that form the basis of the ''up to'' rate? If not, what units should an ''up to'' rate be based upon, and how should that rate be calculated? Should the Commission prescribe a standard methodology that would allow an applicant to avoid a hearing on rate methodology? Would a methodology that is based on average costs (both variable and embedded) allow an applicant to avoid a hearing because it eliminates the seller's discretion in designating particular units as ''likely to participate''? Are there other approaches that would accomplish a similar objective?

141. In the April 14 and July 8 Orders, the Commission stated that sellers that are found to have market power (*i.e.*, after the Commission has ruled on a DPT analysis) or that accept a presumption of market power can either accept the Commission's default cost-based mitigation measures or propose alternative methods of mitigation. With regard to alternative methods of mitigation, should the Commission allow as a means of mitigating market power the use of agreements that are not tied to the cost of any particular seller but rather to a group of sellers? Would

[132] A seller's incremental cost (the out-of-pocket cost of producing an additional MW) is compared with a buyer's decremental cost (the cost of not producing the last MW). The average of the incremental and decremental cost is the ''split the savings'' rate.

[133] *See AEP Power Marketing, Inc.,* 97 FERC ¶ 61,219 (2001) (SMA Order).

[134] April 14 Order, 107 FERC ¶ 61,018 at P 147, 148 & n. 142, 150 & n. 144.

the use of such agreements as a mitigation measure satisfy the just and reasonable standard of the FPA?

142. Finally, the Commission notes that if a mitigated seller is returning to existing cost-based rates, the Commission would have the obligation to consider whether those rates are sufficient for that purpose, and would have the authority to institute a proceeding under FPA section 206 to investigate their justness and reasonableness.

b. Discounting.

143. A seller that has authorization to sell under an ''up to'' cost-based rate has an incentive to discount its sales price when the market price in the seller's local area is lower than the cost-based ceiling rate. During these periods, a rational seller will discount its sales to maximize revenue. In the past the Commission has encouraged discounting as an efficient practice that can maximize revenues to reduce the revenue requirements borne by customers.

144. The primary issue in this area is whether a seller can ''selectively'' discount, *i.e.*, offer different prices to different purchasers of the same product during the same time period. We seek comment on whether selective discounting should be allowed for sellers that are found to have market power or have accepted a presumption of market power and are offering power under cost-based rates. If we do allow selective discounting, what mechanisms (reporting or otherwise), if any, are necessary to protect against undue discrimination? By contrast, if we do not allow selective discounting, should we require the utility to post discounts to ensure that they are available to all similarly situated customers?

c. Protecting Mitigated Markets.

145. Under our current policy, if a seller loses market-based rate authority in its home control area, any sales in that control area must be pursuant to cost-based rates; however, there is no requirement that the seller offer its available power to customers in that home control area. Instead, the seller is free to market all its available power to purchasers outside that control area if, for example, market prices outside its control area exceed the cost-based caps. Wholesale customers have argued that default cost-based mitigation of this kind is of little value if a mitigated seller can simply market its excess capacity at market-based rates in other control areas.[135] To address this concern, commenters have suggested that the Commission either revoke a mitigated seller's market-based rate authority in all control areas or impose some type of mitigation that protects wholesale customers in those areas where a seller has been found to have market power or has accepted the presumption of market power.

146. The Commission seeks comment on whether its current policy is appropriate and, if not, what further restrictions are necessary. In particular, we seek comment on the following:

a. Is it appropriate to continue to allow sellers that are subject to mitigation in their home control area to sell power at market-based rates outside their control area? Does this represent undue discrimination or otherwise constitute ''withholding'' in the home control area that is inconsistent with the FPA's mandate that rates be just, reasonable and not unduly discriminatory? Or, does this reflect economically efficient behavior and encourage necessary trading within and across regions, particularly in peak periods when marginal prices rise above average embedded costs?

b. Should the Commission adopt a form of ''must offer'' requirement in mitigated markets to ensure that available capacity (i.e., above that needed to serve firm and native load customers) is not withheld? If so, should the must offer requirement be limited to sales of a certain period to help ensure that wholesale customers use that power to serve their own needs, rather than simply remarketing that power outside the control area and profiting? For example, should there be an annual open season under which the mitigated seller offers its available capacity to local customers for the following year at the cost-based ceiling rate and, if customers do not commit to purchase that capacity, then the seller is free to sell the remaining capacity at market-based rates where it has authority to do so? If we adopt such a must offer requirement, what rules should there be to define ''available'' capacity to avoid case-by-case disputes over this issue?

c. As an alternative, should the Commission find that any seller that has lost market-based rate authority in its home control area should not be able to sell power at market-based rates in adjacent (first tier) control areas?

Would this be appropriate mitigation and easier to implement than a must offer requirement? Or, would such mitigation unnecessarily discourage trading and flexibility in markets for which the seller has been found not to have market power?

d. Sales that Sink in Unmitigated Markets.

147. The Commission has stated that its role is to assure customers that sellers who are authorized to sell at market-based rates do not have market power or have adequately mitigated the potential exercise of market power.[136] Further, the Commission's recent orders accepting mitigation proposals are clear that the mitigation is to apply to sales in the geographic market where an applicant is found (or presumed) to have market power (mitigated market), not only sales to end users in the control area.[137] In order to put in place adequate mitigation that eliminates the ability to exercise market power and ensure that rates are just and reasonable,[138] all market-based rate sales in a mitigated market where an applicant is found or presumed to have the ability to exercise market power must be subject to mitigation approved by the Commission.

148. Some companies have proposed limiting mitigation to sales that ''sink in'' the mitigated market, that is, so that mitigation would only apply to end users in the mitigated market.[139] However, in *MidAmerican Energy Company*,[140] the Commission stated that limiting mitigation to sales that ''sink in'' the mitigated market would improperly limit mitigation to certain sales, namely, only to sales to those buyers that serve end-use customers in the mitigated market. Limiting mitigation in this manner would improperly allow market-based rate sales within the mitigated market to entities that do not serve end-use customers in the mitigated market. Such a limitation would not mitigate the seller's ability to attempt to exercise market power over sales in the mitigated market and is inconsistent with our direction in the April 14 and July 8 Orders. For example, on rehearing of the April 14 Order, it was argued that access to power sold under mitigated prices should be restricted to buyers serving end-use customers within the relevant geographic market in which the applicant has been found to have market power. In particular, arguments were made that an applicant should not be required to make sales at mitigated prices to power marketers or brokers

[135] *See, e.g., Carolina Power and Light Company*, 113 FERC ¶ 61,130 at P 16 & n.21 (2005).

[136] July 8 Order, 108 FERC ¶ 61,026 at P 146.

[137] *See Oklahoma Gas and Electric Company and OGW Energy Resources, Inc.*, 114 FERC ¶ 61,297 (2006), *reh'g pending; Carolina Power and Light Company*, 114 FERC ¶ 61,294 (2006) (*CP&L); Duke Energy Trading and Marketing, L.L.C.*, 114 FERC ¶ 61,056 (2006).

[138] *See* April 14 Order at P 144, 147.

[139] The Commission has recently clarified that mitigation applies to all sales in a mitigated market. *See, e.g., CP&L*, 114 FERC ¶ 61,294 at P 9 (2006).

[140] 114 FERC ¶ 61,280 (2006), *reh'g pending (MidAmerican*).

without end-use customers in the relevant market. In the July 8 Order, the Commission rejected the suggestion that we restrict mitigated applicants to selling power only to buyers serving end-use customers,[141] and has since rejected tariff language that proposes to do so.[142]

149. The Commission seeks comment on whether it should modify or revise its current policy and, if so, how. In particular, we seek comment on the following:

a. Should the Commission allow market-based rate sales by a mitigated seller within a mitigated market if those sales do not ''sink'' in that control area? If so, under what circumstances should the Commission allow such sales and how would the Commission ensure that such sales do indeed ''sink'' in an unmitigated control area? How does the Commission distinguish possible permissible sales to the border of the restricted control area from sales that are not permitted within the restricted control area?

b. Under such a policy, what opportunities, if any, are presented to ''game'' the mitigation? If it is determined that a mitigated seller's sales in fact do not ''sink'' outside the restricted control area, what penalties should the Commission consider?

c. If the Commission retains its current policy of prohibiting all market-based rate sales by a mitigated seller in a mitigated market what effect, if any, does such a policy have on existing contractual arrangements? With regard to existing transmission rights a buyer may have in a mitigated market, how easily could existing market-based rate agreements between that buyer and the mitigated seller be amended to provide for delivery of power in an unmitigated market under the same economic terms as exists today?

E. Implementation Process

1. Current Practice

150. The Commission's current practice is a case-by-case analysis of new applications for market-based rate authorization as well as updated market power analyses. In addition, to date the Commission has allowed sellers to propose their own individualized tariffs.

2. Proposal

151. The Commission proposes to put in place a structured, systematic review to assist the Commission in analyzing sellers based on a coherent and consistent set of data for relevant geographic markets. In addition, some corporate families have many subsidiaries with market-based rate authorization, each with its own separate tariff. This has led to confusion, inconsistencies between the tariffs of a single corporate family, and difficulty in coordinating changes to the tariffs. To remedy these concerns, the Commission proposes to streamline the administrative process associated with the filing and review of market-based rate updated market power analyses and to consolidate market-based rate authorizations into a single tariff.

152. The Commission proposes to continue to require sellers to submit updated market power analyses for all relevant geographic markets (default or proposed alternative markets, as discussed previously) in which they own or control generation. However, the Commission proposes to modify this filing requirement in two ways. First, the Commission proposes to establish two categories of sellers with market-based rate authorization. The first category (Category 1) would include power marketers and power producers that own or control 500 MW or less of generating capacity in aggregate and that are not affiliated with a public utility with a franchised service territory. In addition, Category 1 sellers must not own or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or must have been granted waiver of the requirements of Order No. 888 because such facilities are limited and discrete and do not constitute an integrated grid[143]), and must present no other vertical market power issues. Rather than requiring Category 1 sellers to file a regularly scheduled triennial review, the Commission would monitor any market power concerns through the change in status reporting requirement and through ongoing monitoring by the Commission's Office of Enforcement.[144] All sellers with market-based rate authority are required to make a filing with the Commission regarding any change in status that reflects a departure from the characteristics that the Commission relied upon in granting market-based rate authority. Failure to timely file a change in status report would constitute a violation of the Commission's regulations and the seller's MBR tariff.[145] A seller would be subject to disgorgement of profits and/or civil penalties from the date on which the tariff violation occurred. Such seller may also be subject to suspension or revocation of its authority to sell at market-based rates (or other appropriate non-monetary remedies). In addition, the Commission would retain the right to initiate a section 206 proceeding if circumstances warranted. A seller that no longer satisfies the Category 1 criteria would be required to submit a change in status notification and would be subject to the updated market power analysis filing required of Category 2 sellers.

153. The second category (Category 2) would include all sellers that do not qualify for Category 1. Category 2 sellers, in addition to the requirement to file change in status reports, would be required to file regularly scheduled triennial reviews. Category 2 sellers are the larger sellers with more of a presence in the market and are more likely to either fail one or more of the indicative screens or pass by a smaller margin than Category 1 sellers.

154. To ensure greater consistency in the data used to evaluate Category 2 sellers, the Commission proposes to require each seller to file updated market power analyses for its relevant geographic markets (default and any proposed alternative markets) on a schedule that will allow examination of the individual seller at the same time the Commission examines other sellers in these relevant markets and contiguous markets within a region from which power could be imported.[146] The regional reviews would rotate by geographic region with three regions reviewed per year. Appendix B provides a schedule for the proposed regional review process. The Commission proposes to continue to make findings on an individual seller basis, but will have before it a complete picture of the uncommitted capacity and simultaneous import capability into the relevant geographic markets under review.

155. The Commission proposes to codify in its regulations the obligation for Category 2 sellers to timely file a triennial review. As a result, failure to timely file a triennial review would constitute a violation of the Commission's regulations and the seller's MBR tariff and could result in disgorgement of profits and/or civil

[141] *See* July 8 Order, 108 FERC ¶ 61,026 at P 134.

[142] See, e.g., MidAmerican, 114 FERC ¶ 61,280 at P 33.

[143] *See, e.g., Black Creek Hydro, Inc.,* 77 FERC ¶ 61,232 (1996).

[144] *Order No. 652, FERC Stats. & Regs.,* ¶ 31,175.

[145] *Id.* at P 113.

[146] Sellers would be deemed to be assigned to a region based on the control area in which they own or control generation. Nine regions will be examined using the regions specified in the *2004 State of the Markets Report*, excluding ERCOT, as shown in the map attached as part of Appendix B. Those regions are: Northwest, California, Southwest, Midwest, SPP, Southeast, PJM, New York, and New England.

penalties from the date on which the seller violated its tariff.[147] A seller may also be subject to suspension or revocation of its authority to sell at market-based rates (or other appropriate non-monetary remedies). If a seller files a timely triennial review, its market-based rate authority would continue unless the Commission institutes a section 206 proceeding because the seller fails one of the indicative screens and the Commission subsequently makes a definitive finding of market power and revokes its market-based authority, or the seller accepts the presumption of market power and adopts the default cost-based mitigation or proposes other cost-based mitigation or tailored mitigation.

156. Some corporate families own or control generation in multiple control areas and different regions. For example, a corporate family may own generation facilities on the east coast as well as in California. In this instance, the corporate family would be required to file a current triennial review for each region in which members of the corporate family sell power during the time period specified for that region. To the extent a new subsidiary is formed and a new request for market-based rate authority is submitted, triennial reviews will be due at the regularly scheduled time for review of the markets in the region in which the new applicant owns or controls generation. We seek comment on this proposal.

157. In addition, the Commission proposes to require that all triennial review filings and all new applications for market-based rate authority include an appendix listing all generation assets owned or controlled by the corporate family by control area and listing the in-service date and nameplate and/or seasonal ratings by unit. The appendix should also reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities.

158. Triennial reviews should reflect the most recently available historical data from the calendar year prior to the year of filing.

159. We seek comments on the proposal to adopt these filing requirements.

F. Market-Based Rate Tariff (MBR Tariff)

160. Historically the Commission has not required the filing of a market-based rate tariff of general applicability. However, many sellers have submitted one or more umbrella market-based rate tariffs that set forth the conditions of market-based rate approval and the general terms applicable to all transactions, with individual transactions being negotiated through service agreements, letter confirmations, or other documentation that sets forth the rates and any individualized terms and conditions. This general practice has afforded flexibility to sellers as markets and the industry evolved and as new products and services were sold under market-based rate tariffs. However, this flexible approach has sometimes resulted in inconsistency in the tariffs filed within the same corporate family, which can create confusion for customers and compliance problems, and it also has resulted in inconsistencies in memorializing the conditions of market-based rate approval in such tariffs.

161. As part of our effort to streamline and simplify the market-based rate program in general, while at the same time maintaining a high degree of transparency and oversight, we propose to adopt a market-based rate tariff of general applicability that all sellers authorized to sell wholesale electric power at market-based rates will be required to file as a condition of market-based rate authority.[148] The MBR tariff would require the seller to comply with the applicable provisions of the market-based rate regulations which this NOPR proposes to codify in 18 CFR Part 35, Subpart H. These provisions reflect the Commission's two decades of experience with market-based rate power sales and should serve to reduce the burden on customers of managing multiple tariffs. In addition, the seller would be required to list on the MBR tariff the docket numbers and case citations, where applicable, of the proceedings, if any, in which the seller received Commission authorization to make sales of energy between affiliates or where its market-based rate authority was otherwise restricted or limited. A copy of the proposed MBR tariff is attached as Appendix A.

162. Not all of the provisions of the proposed regulations may be applicable to all sellers. For example, a seller may not wish to offer ancillary services under the tariff. The Commission seeks comments on whether a placeholder should be reserved in the MBR tariff for the seller to indicate those parts of the regulations that are not applicable to that seller.

163. In proposing the adoption of the MBR tariff, our purpose is not to direct the terms and conditions of a particular power sale or to otherwise reduce the flexibility afforded to market-based rate sellers in fashioning the terms of individual transactions. Rather, sellers would continue to negotiate the terms and conditions of sales entered into under their MBR tariff, and the terms and conditions of those underlying agreements and the transaction data would be reflected in the quarterly EQRs. Further, if sellers wish to offer or require certain ''generic'' terms and conditions that in the past were contained in their market-based rate tariff, they may place customers on notice of such requirements by including such information on a company website and include any related provisions in individual transaction agreements. Our purpose in requiring a MBR tariff of general applicability is to ensure that the MBR tariff on file with the Commission for each seller reflects, in a consistent manner, only those matters that are required to be on file, namely, the identity of the seller(s), the docket number(s) of the market-based rate authorization, the seller's requirement to follow the conditions of market-based rate authorization contained in our proposed regulations, and that the rates, terms and conditions of any particular sale will be negotiated between the seller and individual purchasers. We do not believe any useful purpose is served in having on file the commercial terms preferred by particular applicants, given that the purpose of market-based rate authorization is to provide flexibility in such terms and conditions. Furthermore, our standards for approval of market-based rates do not include a review of such individualized commercial terms and thus, such submissions are unnecessary.

164. Further, the Commission proposes that, rather than each entity having its own MBR tariff, which can result in dozens of tariffs for each corporate family with conflicting provisions, each corporate family has only one tariff on file, with all affiliates with market-based rate authority separately identified in the tariff. This will allow for better transparency with regard to what sellers each corporate family has, and a more customer-friendly tariff. The requirement to have a single MBR tariff does not mean that all members of a corporate family would be counterparties on every sale under the tariff; rather, individual transactions would continue to be consummated

[147] Currently, the requirement to file triennial reviews is contained in our orders, but not in the tariffs or in our regulations.

[148] Order No. 614 guidelines for designating rate schedules must be observed.

with individual sellers within the corporate family, as they are today.

165. We seek comments on this proposal.

166. Regarding the specifics of filing the MBR tariffs, we note that the Commission has initiated a rulemaking proceeding to require the filing of electronic tariffs.[149] We propose that the timing of filing and format for the MBR tariffs be consistent with the requirements of the final rule issued in that proceeding.

G. Miscellaneous Issues

1. Waivers

167. Certain entities with market-based rate authority have typically been granted waiver of the Commission's Uniform System of Accounts, and thus have not been subject to specified accounting rules. For instance, Parts 41, 101, and 141 of the Commission's regulations prescribe certain informational requirements that focus on the assets that a public utility owns.[150] For market-based rate applications, the Commission has taken the position that, because a power marketer does not own any electric power generation or transmission facilities, its jurisdictional facilities would be only corporate and documentary, its costs would be determined by utilities that sell power to it, and its earnings would not be defined and regulated in terms of an authorized return on invested capital; accordingly, the Commission has granted waivers to power marketers of the requirements of these Parts. The Commission also has granted other market-based rate sellers, such as independent or affiliated power producers, waiver of the requirements of these Parts.

168. The Commission has also granted power marketers' and others' requests for blanket approval under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability, assuming that no party objects to such treatment during a notice period which the Commission provides.[151] The purpose of section 204 of the FPA, which Part 34 implements, is to ensure the financial viability of public utilities obligated to serve electric consumers. The Commission has granted blanket approval under Part 34 for future issuances of securities and assumptions of liability where the entity seeking market-based rate authority, such as a power marketer or power producer, is not a public service franchise providing electricity to consumers dependent upon its service.[152]

169. As the development of competitive wholesale power markets continues, independent and affiliated power marketers and power producers are playing more significant roles in the electric power industry. In light of the evolving nature of the electric power industry, the Commission seeks comment on the extent to which these entities should be required to follow the Uniform System of Accounts, what financial information, if any, should be reported by these entities, and how frequently it should be reported, and whether the Part 34 blanket authorizations continue to be appropriate.

170. The Commission announced in the April 14 Order that, where an applicant is found to have market power (or where the applicant accepts a presumption of market power), the applicant will be required to adopt some form of cost-based rates or other mitigation the applicant proposes and the Commission accepts. Under these circumstances, the Commission found that it is essential that appropriate accounting records be maintained consistent with the Commission's regulations. Accordingly, the Commission indicated it will no longer waive the otherwise applicable accounting regulations (*e.g.* Parts 41, 101, and 141 of the Commission's regulations).[153] Thus, the Commission would revoke the accounting waivers for a mitigated seller, and for any of its affiliates with market-based rates in the mitigated control area. Further, the Commission stated that it will not grant blanket approval for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission's regulation for the mitigated seller and its affiliates.[154] In the case of any affiliates, this would entail rescission of these blanket authorizations in all geographic areas, not just the mitigated control area.

171. We note that some sellers have had their market-based rate authority revoked, or have elected to relinquish their market-based rate authority after a presumption of market power, and have begun or resumed selling power at cost-based rates. Consistent with the April 14 Order, any waivers previously granted in connection with those sellers' market-based rate authority are no longer applicable. We propose that such revocation of waivers become effective 60 days from the date of an order revoking such waivers in order to provide the affected utility with time to make the necessary filings with the Commission and allow for an orderly transition from selling under market-based rates to cost-based rates. We seek comment in this regard. The Commission seeks input regarding any difficulties sellers may have when transitioning to cost-based rates and whether a prior waiver of the accounting regulations would leave them without adequate data to come into conformance with the accounting rules.

2. Foreign Sellers

172. Under existing policy, a foreign entity selling in the United States (and each of its affiliates) must not have, or must have mitigated, market power in generation and transmission and not control other barriers to entry. In addition, the Commission considers whether there is evidence of affiliate abuse or reciprocal dealing. However, for foreign sellers, the Commission allows a modified approach to the four prongs.

173. With regard to generation market power, should a foreign seller or any of its affiliates own or control any generation in the United States, or should one of its first-tier markets include a United States market, it should perform the market power screens in the appropriate control area(s).

174. With regard to transmission market power, the Commission requires a foreign seller seeking market-based rate authority to demonstrate that its transmission-owning affiliate offers non-discriminatory access to its transmission system that can be used by competitors of the foreign seller to reach United States markets.[155] However, if foreign transmission facilities meet the criteria

[149] *See Electronic Tariff Filings, Notice of Proposed Rulemaking,* 69 FR 43929 (July 23, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,575 (July 8, 2004).

[150] Part 41 pertains to adjustments of accounts and reports; Part 101 contains the Uniform System of Accounts; Part 141 describes required forms and reports.

[151] We note that the Commission's jurisdiction over issuances of securities and assumptions of liabilities under section 204 of the FPA applies only to entities that are public utilities as defined in the FPA and only where the public utilities' security issues are not regulated by a State commission (see FPA section 204(f)).

[152] *See, e.g., St. Joe Minerals Corp.,* 21 FERC ¶ 61,323 (1982); *Cliffs Electric Service Company,* 32 FERC ¶ 61,372 (1985); *Citizens Energy Corp.,* 35 FERC ¶ 61,198 (1986); *Howell Gas Management Company,* 40 FERC ¶ 61,336 (1987); and *Nevada Sun-Peak Limited Partnership,* 86 FERC ¶ 61,243 (1999).

[153] April 14 Order, 107 FERC ¶ 61,018 at P 150.

[154] *Id.*

[155] *See TransAlta Enterprises Corp.,* 75 FERC ¶ 61,268 at 61,875 (1996), and *Energy Alliance Partnership,* 73 FERC ¶ 61,019 at 61,030–31 (1995) (*Energy Alliance*).

for waiver of Order No. 888, such a demonstration would not be required.[156]

175. For purposes of market-based rate authorization, the Commission does not consider transmission and generation facilities that are located exclusively outside of the United States and that are not directly interconnected to the United States. However, the Commission would consider transmission facilities that are exclusively outside the United States but nevertheless interconnected to an affiliate's transmission system that is directly interconnected to the United States.[157]

176. Regarding other potential barriers to entry, a foreign seller should inform the Commission of any potential barriers to entry that can be exercised by either it or its affiliates in the same manner as a seller located within the United States.

177. Finally, regarding affiliate abuse, the Commission typically requires a power marketer with market-based rate authorization to file for approval under section 205 of the FPA before selling power to or purchasing power from any utility affiliate. However, this general requirement does not apply to situations involving sales of power to or from a foreign utility outside of the Commission's jurisdiction.[158]

178. The Commission proposes to retain its current policy when reviewing a foreign seller's application for market-based rate authorization consistent with our overall approach discussed herein. The Commission seeks comments regarding whether this current policy is adequate to grant market-based rate authorization to such sellers.

3. Change in Status

179. In early 2005, the Commission clarified and standardized market-based rate sellers' reporting requirement for any change in status that departed from the characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652,[159] the Commission required, as a condition of obtaining and retaining market-base rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. The rule provided that a change in status includes, but is not limited to: (i) Ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.[160] A seller's experiencing one of these changes would trigger the notification requirement.[161]

180. The Commission has provided further guidance on change in status filings in several cases. In *Calpine Energy Services, L.P.*,[162] the Commission clarified that sellers making a change in status filing to report an energy management agreement are required to make an affirmative statement regarding whether the agreement transfers control of any assets and whether it results in any material effect on the conditions the Commission relied on when granting market-based rates. The Commission also clarified that:

> A seller making a change in status filing is required to state whether it has made a filing pursuant to section 203 of the Federal Power Act. To the extent the seller has made a section 203 filing that it submits is being made out of an abundance of caution and thus has voluntarily consented to the Commission's section 203 jurisdiction, the seller will be required to incorporate this same assumption in its market-based rate change in status filing (*e.g.*, if the seller assumes that it will control a jurisdictional facility in a section 203 filing, it should make that same assumption in its market-based rate change in status filing and, on that basis, inform the Commission as to whether there is any material effect on its market-based rate authority).[163]

181. In addition, market-based rate sellers must report as a change in status each cumulative increase in generation of 100 MW or more that has occurred since the most recent notice of change in status filed by that seller (*i.e.*, multiple increases in generation that individually do not exceed the 100 MW threshold must all be reported once the aggregate amount of such increases reaches 100 MW or more).[164] The Commission reserves the right to require additional information, including an updated market power analysis, if necessary to determine the effect of an entity's change in status on its market-based rate authority.[165]

182. In Order No. 652, the Commission identified a number of issues that could be pursued in the instant rulemaking proceeding. The Commission had proposed in that rulemaking proceeding to include fuel supplies as an input to electric power production the acquisition of which would be a reportable change in status. However, in the final rule, the Commission determined that this issue would be more appropriately raised in the instant rulemaking proceeding, and stated that the Commission would provide opportunity for interested persons to propose modifications to the existing approach in this proceeding.[166] Accordingly, the Commission solicits comments on whether ownership of any new inputs to electric power production, including fuel supplies, should be reportable. To the extent that any such information is deemed reportable, the Commission proposes to align this reporting requirement to reflect the consideration of other barriers to entry as part of the vertical market power analysis, and commenters should refer to the discussion of other barriers to entry herein where the Commission proposes to clarify what constitutes an input to electric power production as part of the Commission's review of vertical market power.

183. In Order No. 652, the Commission clarified that the reporting of transmission outages per se as a change in status was not required. However, to the extent a transmission outage affects, on a long-term basis (*e.g.*, an extended outage of a circuit or substation), whether the seller satisfies the Commission's concerns regarding horizontal or vertical market power (*e.g.*, if it reduces imports of capacity by competitors that, if reflected in the generation market power screens, would change the results of the screens from a ''pass'' to a ''fail''), a change of status filing would be required. The Commission also stated that it would consider this matter further in the context of this rulemaking in the transmission market power part of the market power analysis.[167] We propose,

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[156] *Canadian Niagara Power Company,* 87 FERC ¶ 61,070 (1999).

[157] *Fortis Ontario, Inc. and Fortis U.S. Energy Corp.,* 115 FERC ¶ 61,110 (2006).

[158] *Energy Alliance,* 73 FERC ¶ 61,019 at 61,031; *TransAlta,* 75 FERC ¶ 61,268 at 61,876.

[159] *Order No. 652 at P 47.*

[160] *See* 18 CFR 35.27(c) (2005).

[161] If a seller ceases to do business, or, in the event of its dissolution, such seller should file a notice of cancellation of its rate schedule.

[162] 113 FERC ¶ 61,158 at P 13 (2005).

[163] *Id.* at P 14 (footnotes omitted).

[164] *See* Order No. 652, FERC Stats. & Regs. ¶ 31,175 at P 68. The reporting requirement is triggered only by net, rather than gross, increases in generation capacity of 100 MW or more. For example, capacity decreases associated with changes in generation capacity or expiration of capacity under long-term purchase contracts should be netted against generation capacity increases to determine whether the 100 MW materiality threshold has been reached. The Commission has adopted a netting approach in determining whether the materiality threshold has been reached, subject to the cumulative 100 MW threshold. *See* Order No. 652–A, 111 FERC ¶ 61,413 at P 24–25.

[165] Order No. 652 at P 95.

[166] *Id.* at P 58.

[167] *Id.* at P 75.

consistent with Order No. 652, not to require the reporting of transmission outages per se as a change in status. We seek comment on this proposal.

184. The Commission declined in Order No. 652 to narrow or delineate the definition of control. The Commission noted that, historically, if a seller has control over certain capacity such that it can affect the ability of the capacity to reach the relevant market, then that capacity should be attributed to the seller when performing the generation market power screens. Further, the capacity associated with contracts that confer operational control of a facility to an entity other than the owner must be assigned to the entity exercising control over that facility. The Commission concluded that it is not possible to predict every contractual agreement that could result in a change of control of an asset. However, the Commission indicated that to the extent that parties wish to propose specific definitions or clarifications to the Commission's historical definition of control, they may do so in the course of the instant rulemaking.[168] As discussed above, the horizontal market power section herein seeks comment on a number of issues concerning control and commitment of generation.

185. In Order No. 652 we did not expand the triggering events for a change in status filing to include actions taken by a competitor (such as a decision to retire a generation unit or take transmission capacity out of service) or natural events (such as hydro-year level, higher wind generation, or load disruptions due to adverse weather conditions). In Order No. 652, we concluded that the reporting obligation should extend only to changes in circumstances within the knowledge and control of the seller. However, in Order No. 652, we stated that interested persons could pursue in the instant rulemaking whether the Commission should expand the triggering events for a change in status filing. Accordingly, we invite comments generally on whether the Commission should expand the triggering events beyond ownership or control of facilities or inputs and affiliation with entities that own or control facilities or inputs or that have a franchised service territory, as adopted in Order No. 652.

4. Third-Party Providers of Ancillary Services

186. In Order No. 888, the Commission required transmission providers to offer certain ancillary services at cost-based rates as part of their open access commitment but also contemplated that third parties (parties other than the transmission provider in a particular transaction) would also provide ancillary services.[169] The Commission also left open the door that ancillary services could be provided on other than a cost-of-service basis. In Order No. 888, Commission stated that it would entertain requests for market-based pricing related to ancillary services on a case-by-case basis if supported by analyses that demonstrate that the seller lacks market power in these discrete services.[170] In *Ocean Vista Power Generation, L.L.C. (Ocean Vista),*[171] the Commission explained that as a general matter a study of ancillary service markets should address the nature and characteristics of each ancillary service, as well as the nature and characteristics of generation capable of supplying each service, and that the study should develop market shares for each service. The Commission also noted that it would entertain alternative explanations and approaches.

187. In *Ocean Vista*, the Commission also offered more detailed guidance for what a market power study for ancillary services markets should include: (1) Defining a relevant product market for each ancillary service, which should include the applicant's product, together with other products that, from the buyer's perspective, are good substitutes; (2) identifying the relevant geographic market, which could include all potential suppliers of the product from whom the buyer could obtain the service, taking into account relevant factors which may include the other suppliers' locations, the physical capability of the delivery system and the cost of such delivery, and important technical characteristics of the suppliers' facilities; (3) establishing market shares for all suppliers of the ancillary services in the relevant geographic markets; and (4) examining other barriers to entry.

188. The guidance offered by the Commission in Order No. 888 and *Ocean Vista* was designed for two purposes: to ensure that sellers of ancillary services do not exercise market power and to further the goal of promoting competition in ancillary service markets.

189. However, in *Avista Corporation,*[172] the Commission stated that there remained two problems hindering the development of ancillary service markets. First, access to critical data may preclude many potential sellers of ancillary services from performing reliable market analyses. Second, without an alternative means of regulating ancillary service rates at an early stage in the development of competitive wholesale power markets, the Commission may not be able to encourage sufficient market entry of third-party providers of ancillary services.

190. Accordingly, the Commission adopted a policy wherein third-party ancillary service providers that cannot perform a market power study would be allowed to sell ancillary services at market-based rates, but only in conjunction with a requirement that such third parties establish an Internet-based OASIS-like site for providing information about and transacting ancillary services.

191. In this regard, the Commission stated that it will apply this policy only to applicants who are authorized to sell power and energy at market-based rates. In addition, the Commission stated that it will not apply this approach to sales of ancillary services by a third-party supplier in the following situations: (1) The approach will not apply to sales to a regional transmission organization (RTO) or an independent system operator (ISO), *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties (the Commission stated that its experience to date indicates that the data problems associated with market analysis involving sales to an ISO, for example, should not be insurmountable and an appropriate showing of a lack of market power can be made);[173] (2) to address affiliate abuse concerns, the approach will not apply to sales to a traditional, franchised public utility affiliated with the third-party supplier,

[168] *Id.* at P 47.

[169] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,720–21.

[170] *Id.*; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,237–38.

[171] 82 FERC ¶ 61,114 at 61,406–07.

[172] 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999) (*Avista*).

[173] With the formation of RTOs and ISOs, several RTO/ISOs performed market analyses to demonstrate whether various ancillary services are competitive. The result has been as follows: California Independent System Operator: Regulation, Spinning Reserve, and Non-Spinning Reserve. ISO New England: Regulation and Frequency (Automatic Generation Control), Operating Reserve—Ten-Minute Spinning, Operating Reserve—Ten-Minute Non-Spinning, and Operating Reserve—Thirty Minute. New York Independent System Operator: Regulation and Frequency Response Service, Operating Reserve Service (including Spinning Reserve, 10-Minute Non-Synchronized Reserves and 30-Minute Reserves). PJM Independent System Operator: Regulation and Frequency Response, Energy Imbalance, Operating Reserve—Spinning, and Operating Reserve—Supplemental. Thus, in markets where the demonstration has been made, sellers are afforded the opportunity to sell at market-based rates subject to any other conditions in those markets.

or to sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier; and (3) the approach will not apply to sales to a public utility who is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers (the Commission indicated that it is open, however, to considering requests for market-based rates in such circumstances on a case-by-case basis).[174]

192. The Commission based its policy as announced in *Avista* on the expectation that, as entry into ancillary service markets occurs, prices will decrease from the level established by the transmission provider's cost-based rate. Under these circumstances, customers will pay prices for ancillary services that are no higher than and will very likely be lower than the transmission provider's cost-based rate.[175] The Commission explained that the ancillary services customer is protected in part by the availability of the same ancillary services at cost-based rates from the transmission provider. The backstop of cost-based ancillary services from the transmission provider provides, in effect, a limit on the price at which customers are willing to buy ancillary services. The Commission stated that it believes that this protection, in conjunction with the Internet-based site requirement, will provide an appropriate and effective safeguard against potential anticompetitive behavior.

193. The information contained in the Internet-based site would include service availability, prices, and requests granted and denied. To further monitor development of market entry, the Commission required third-party suppliers to file with the Commission one year after their Internet-based site is operational (and at least every three years thereafter[176]) a report detailing their activities in the ancillary services market.

194. In particular, the Commission stated that:

> [i]f the applicant cannot perform a study showing that it lacks market power in the provision of ancillary services, it may receive flexible rates provided it safeguards against potential anticompetitive behavior by establishing an Internet-based site for providing information regarding, and conducting, ancillary services transactions. The site would include postings of offers of services available and their offering prices and would provide customers with the ability to request services and make bids for these services. The site would also contain information about accepted and denied requests and the reasons for denial. The site should conform to the applicable OASIS Standards and Communications Protocols (Version 1.3).[177]

195. We propose to retain our current approach in this regard. We seek comment on whether we should modify or revise our current approach and, if so, how. Also, we seek comment on whether our current conditions such as the requirement to establish an Internet-based site continue to be necessary.

Proposed Revisions To Regulations

I. Section 35.27 [Currently] Power Sales at Market-Based Rates

196. Subsections (a) and (b) of this section were added by Order No. 888 in order to implement the post-1996 exemption for new generation and to clarify the authority of state commissions respectively. Order No. 652 later added subsection (c) to implement the change in status reporting requirement.

197. This NOPR proposes to eliminate the post-1996 exemption, and thus the proposed regulatory text deletes subsection (a). Subsection (c) is proposed to move to subpart H section 35.43, and thus the proposed text deletes section 35.27(c). This leaves only current subsection (b) in 35.27. The proposed regulatory text does not revise the language in any way and merely renumbers current subsection (b) to reflect the absence of the other subsections.

198. With the changes proposed herein, the current section heading, ''Power Sales at Market-Based Rates,'' will no longer be pertinent. The Commission proposes to amend the heading to ''Authority of State Commissions'' to reflect the content of the remaining provision.

II. Section 35.36 Generally

199. This section is proposed to define certain terms specific to Subpart H and to explain the applicability of Subpart H.[178] Some of these terms were put in place recently when the Commission codified certain market behavior rules in Order No. 674.[179] Subsection (a)(1) explains that ''seller'' refers to a public utility with authority to, or seeking authority to, engage in sales for resale of electric energy, capacity or ancillary services at market-based rates to make clear that Subpart H deals exclusively with market-based rate power and ancillary services sales. The proposed regulations define Category 1 sellers and Category 2 sellers to assist in understanding the parameters of the updated market power analysis requirement. Subsection (a)(4) defines inputs to electric power production in order to simplify section 35.37(e) regarding other barriers to entry. Subsection (a)(5) indicates that where the term franchised public utility is used, it is meant to include only those public utilities with a franchised service territory that have captive customers. Last, subsection (a)(6) provides a definition for non-regulated affiliated entities, which appears in several places in the proposed regulations.

200. Subsection (b) is intended to leave room for certain provisions that do not apply to a particular seller should the Commission make a finding, for instance, that a franchised public utility has no captive customers and hence section 35.39(b) is not applicable.

201. We solicit comments on whether further or different language than that proposed here should be incorporated in our regulations.

III. Section 35.37 Market Power Analysis Required

202. This section describes the market power analysis the Commission employs, as discussed in the preamble, and when sellers must file one. It is intended to identify the key aspects of the analysis without providing too much detail. The Commission is cognizant that the finer points of the market power analysis change over time as individual orders consider new facts and as precedent shifts to follow the evolution of the power industry; the proposed regulations should not be so

[174] *Avista*, 87 FERC at 61,883 n. 12.

[175] The Commission stated that it is cognizant of, but will address separately and at the appropriate time, situations in which it becomes apparent that, due to changes in ancillary services markets, competitive prices would be higher than the transmission provider's cost-based rate, were it not for the transmission provider's obligation to meet all demand for ancillary services at such a rate.

[176] The Commission reserves the right to require that such a report be filed at any time.

[177] *Avista*, 87 FERC at 61,884. We note that section 37.6(d)(5) of the Commission's regulations states: ''Any entity offering an ancillary service shall have the right to post the offering of that service on the OATT if the service is one required to be offered by the Transmission Provider under the pro-forma tariff prescribed by part 35 of this chapter. Any entity may also post any other interconnected operations service voluntarily offered by the Transmission Provider. Postings by customers and third parties must be on the same page, and in the same format, as posting of the Transmission Provider.''

[178] We note that we also proposed to change the title of Subpart H from 'Wholesale Sales of Electricity at Market-Based Rates' to 'Wholesale Sales of Electric Energy, Capacity and Ancillary Services at Market-Based Rates.'

[179] *Conditions for Public Utility Market-Based Rate Authorization Holders, Order No. 764, FERC Stats. & Regs.* ¶ *31,208, 114 FERC* ¶ 61,163 (2006).

detailed as to require revision from time to time to follow these changes.

203. We solicit comments on the scope of the language that should be incorporated in the regulations.

IV. Section 35.38 Mitigation

204. The NOPR raises questions concerning the current approach and seeks comments regarding any changes the Commission should adopt. In addition, we propose to characterize the informal term ''up to'' cost-based rates as ''priced at no higher than a cost-based ceiling reflecting the cost of the units expected to provide service.'' We seek comments on whether further or different language than that proposed here should be incorporated in our regulations.

V. Section 35.39 Affiliate Provisions

205. This section governs affiliate transactions and affiliate relationships and establishes affiliate conditions that a seller must satisfy as a condition of its market-based rate authority. Subsection (a) includes a provision expressly prohibiting sales between a franchised public utility and any of its non-regulated power sales affiliates without first receiving authorization of the transaction under section 205 of the FPA. This subsection requires that, where the Commission grants a seller authority to engage in affiliate sales under its MBR tariff, any and all such authorizations must be listed in the seller's tariff. We seek comments on the proposal to include this provision in the Commission's regulations.

206. Subsections (b)–(e) contain the market-based rate code of conduct provisions governing the relationship between a franchised public utility and its non-regulated power sales and power brokering affiliates. The provisions of this subsection apply to all franchised public utilities with captive customers. This subsection includes provisions governing the separation of employees, the sharing of market information, sales of non-power goods or services, and power brokering. It proposes that, for purposes of applying the provisions of this section, entities acting on behalf of and for the benefit of a franchised public utility (such as service companies and entities managing the generation assets of the franchised public utility) are considered to be part of the franchised public utility, and entities acting on behalf of and for the benefit of a non-regulated affiliate of a franchised public utility (such as affiliated power marketers and power producers and entities managing the generation assets of the affiliated power marketers and producers) are considered to be part of the non-regulated affiliates. This section is an integral part of the Commission's conditions regarding affiliate abuse where captive customers are concerned. We seek comments on the proposal to include the affiliate provisions in the regulations.

VI. Section 35.40 Ancillary Services

207. This provision restricts sales of ancillary services to those specific geographic markets for which the Commission has authorized market-based rate sales of such. In addition, this section lays out the limitations on third-party ancillary services sales provided in *Avista Corporation.*[180]

VII. Section 35.41 Market Behavior Rules

208. Recently, the Commission rescinded two of its market behavior rules and codified the remainder in section 35.37 of new Subpart H. Also, in a Final Rule issued concurrently with this NOPR, the Commission is revising the record retention period from three years to five years. In this NOPR, we propose to move these market behavior rules, unchanged, from § 35.37 to § 35.41.

VIII. Section 35.42 Market-Based Rate Tariff

209. This proposed provision imposes the requirement that each seller (or its corporate parent) have on file with the Commission the market-based rate tariff that is appended hereto at Appendix A.

IX. Section 35.43 Change in Status Reporting Requirement

210. This section incorporates the provision currently found at subsection 35.27(c), which was codified by Order No. 652. No modifications to the existing language are proposed. We seek comment on whether any changes are warranted.

X. Information Collection Statement

211. The Office of Management and Budget (OMB) regulations require approval of certain information collection and data retention requirements imposed by agency rules.[181] Upon approval of a collection of information and data retention, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. As discussed herein, the Commission proposes amending its regulations to codify its requirements for obtaining and retaining market-based rate authorization, implementing a market-based rate tariff, and incorporating the change in status reporting requirement for sellers seeking market-based rate authority.

212. The Commission has previously required utilities seeking market-based rate authority to file a market power analysis with the Commission; the Commission now proposes to codify that requirement in the Commission's regulations. This proposal reflects the Commission's existing practice and will not impose any additional burden, with the following exception.

213. Section 35.27(a) of the Commission's regulations currently provides that any public utility seeking market-based rate authority shall not be required to submit a generation market power analysis with respect to sales from capacity for which construction commenced on or after July 9, 1996. Under current procedures, if all the generation owned or controlled by an applicant for market-based rate authority and its affiliates in the relevant control area is post-July 9, 1996 generation, such applicant is not required to submit a generation market power analysis. In this NOPR, the Commission proposes to eliminate the express exemption provided in section 35.27(a). This proposal would require that all new applicants seeking market-based rate authority on or after the effective date of the final rule issued in this proceeding, whether or not all of their and their affiliates' generation was built or acquired after July 9, 1996, must provide a market power analysis of their generation to support their application for market-based rate authority. Because the Commission allows an applicant to make simplifying assumptions, where appropriate, and therefore to submit a streamlined analysis, any burden of document preparation occasioned by the proposed elimination of section 35.27(a) should be minimal. Moreover, any burden of document preparation caused by the proposed elimination of section 35.27(a) should apply for the most part only with regard to generation market power analyses required to support an initial application for market-based rate authority.

214. The second filing requirement proposed in this NOPR is that all market-based rate sellers file one market-based rate tariff per corporate family. The MBR tariff proposed by the Commission is appended to this NOPR. The proposed tariff, coupled with the proposed regulations, will simplify the

[180] *Avista Corporation*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

[181] 5 CFR 1320.11 (2005).

content of MBR tariffs filed with the Commission and decrease the burden of document preparation by providing a clearly defined statement of the information sought by the Commission. Utilities will only be required to fill in the company-specific information, which lessens the burden of drafting documentation. A tariff of general applicability will also give the Commission consistency on review and clarity regarding the connections between parent and affiliate utilities in its analysis. Although the requirement to file the specified MBR tariff may cause a minimal burden of document preparation and organization for existing market-based rate sellers, long-term benefits will be realized for utilities as well as the Commission.

215. To retain market-based rate authority, the Commission currently requires that sellers file a triennial review. In this NOPR, the Commission proposes to codify the requirement that certain sellers with market-based rate authority file a triennial review with the Commission to retain that authority. However, the Commission proposes that certain smaller utilities, Category 1 sellers, be relieved of their existing duty to file the triennial review. Thus, larger sellers will not face a greater burden to provide the Commission with the information required for a triennial review, and the burden of supplying the updated analysis may be eliminated for certain smaller entities seeking to retain market-based rate authority.

216. The Commission's regulations, in 18 CFR part 35, specify those reporting requirements that must be followed in conjunction with the filing of rate schedules under the FPA. The information provided to the Commission under part 35 is identified for information collection and records retention purposes as FERC–516. Data collection FERC–516 applies to all reporting requirements covered in 18 CFR part 35 including: electric rate schedule filings, market power analyses, tariff submissions, triennial reviews, and reporting requirements for changes in status for public utilities with market-based rate authority.

217. The Commission is submitting these reporting and records retention requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[182] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting and records retention burden for all four proposed reporting requirements and the records retention requirement is as follows.[183]

Title: Electric Rate Schedule Filings (FERC–516).

Action: Revised Collection.

OMB Control No: 1902–0096.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
Initial Market Power Analysis	120	120	130	15,600
Market-Based Rate Tariff	[184] 650	217	6	3,900
Triennial Review Category 1 [185]	0	0	0	0
Triennial Review Category 2 [186]	600	[187] 200	250	50,000

Total Annual hours for Collection: (Reporting + record retention, (if appropriate) = hours.

Information Collection Costs: The total annual cost for Initial Market Power Analysis is estimated to be $2,340,000. Total annual cost for market-based rate tariffs is projected to be $195,300. Total annual cost for Triennial Reviews Category 2 is projected to be $7,500,000. The hourly rate of $150 includes attorney fees, engineering consultation fees and administrative support. There are 2080 total work hours in a year. There are no filing fees associated with applications for market-based rate authority.

Respondents (Market Power Analysis; MBR Tariff; Triennial Review): Businesses or other for profit.

Frequency of Responses: Market Power Analyses: Occasionally; consistent with current practice, a market power analysis must be filed for each utility seeking market-based rate authority.

MBR Tariff: An MBR tariff for each corporate family with all current sellers to be filed with the Commission after the final rule is effective. In the future, an MBR tariff will be filed occasionally by each utility newly seeking market-based rate authority.

Triennial Review: Updated market power analysis filed every three years for Category 2 sellers seeking to retain market-based rate authority.[188]

Necessity of the Information: Market Power Analyses: Consistent with current practices, the market power analysis aids the Commission in determining whether an entity seeking market-based rate authority lacks market power and permits a determination that sales by that entity will be just and reasonable.

MBR Tariff: A market-based rate tariff filed for each corporate family, with all affiliates with market-based rate authority separately identified in the tariff, would improve the efficiency of the Commission in its analysis and determination of market-based rate authority. The MBR Tariff would allow the Commission to have a clear definition of the relationships between parent and affiliate utilities in assessing market-based rate authority and/or the investigation thereof. This will allow for better transparency with regard to what sellers each corporate family has, and a more customer friendly tariff. A tariff of general applicability will also reduce document preparation time overall and provide utilities with the clearly defined expectations of the Commission.

Triennial Review: The triennial review allows the Commission to monitor market-based rate authority to

[182] 44 U.S.C. 3507(d) (2000).

[183] These burden estimates apply only to this NOPR and do not reflect upon all of FERC–516.

[184] The number of respondents for market-based rate tariffs is expected to be 650. The figure 217 represents 650 respondents, per year, over the course of 3 years. Also, the 650 figure takes into account that parent companies will file for their affiliates.

[185] Category 1 Sellers are power marketers and power producers that own or control 500 MW or less of generating capacity in aggregate and that are not affiliated with a public utility with a franchised service territory. In addition, Category 1 sellers must not own or control transmission facilities, and must present no other vertical market power issues. The zero in this section represents that Category 1 Sellers are not responsible for filing triennial updates.

[186] Category 2 Sellers are any sellers not in Category 1.

[187] To determine the number of responses, the number of respondents (600) has been divided by 3 because the responses will be submitted to the Commission on a staggered basis over the course of a three year period.

[188] Certain smaller entities (Category 1 sellers) are proposed to be exempted from this requirement.

detect changes in market power or potential abuses of market power. The updated market power analysis permits the Commission to determine that continued market-based rate authority will still yield rates that are just and reasonable.

Internal review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collections of information proposed by this NOPR and has determined that these collections of information are necessary and conform to the Commission's plans, as described in this order, for the collection, efficient management, and use of the required information.[189]

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

XI. Environmental Analysis

218. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[190] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[191] The actions proposed here fall within the categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, or do not substantially change the effect of legislation or regulations being amended.[192] In addition, the proposed rule is categorically excluded as an electric rate filing submitted by a public utility under sections 205 and 206 of the FPA.[193] As explained above, this proposed rule addressing the issue of electric rate filings submitted by public utilities for market-based rate authority is clarifying in nature. Accordingly, no environmental assessment is necessary and none has been prepared in this NOPR.

XII. Regulatory Flexibility Act Analysis

219. The Regulatory Flexibility Act of 1980 (RFA)[194] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities.[195] The proposed rule will be applicable to all public utilities seeking and currently possessing market-based rate authority. The Commission finds that the regulations proposed here should not have a significant impact on small businesses.

220. The submission of a market power analysis is currently required of all entities seeking authority to sell at market-based rates, and the proposed rule does not alter which entities will be required to file these analyses. The proposed rule does not create a new reporting requirement. It does, however, propose to expand the scope of the analysis that must be submitted for those entities that previously were exempted from preparing a generation market power analysis by virtue of 18 CFR 35.27(a). The Commission is concerned that the continued use of the section 35.27(a) exemption, in time, would encompass all market participants as all pre-July 9, 1996 generation is retired. Nevertheless, because the Commission allows an applicant to make simplifying assumptions, where appropriate, and therefore to submit a streamlined analysis, the Commission believes that any additional burden imposed by the proposed elimination of the section 35.27(a) exemption will be minimal. Thus, public utilities are currently prepared to submit market power analyses and this requirement does not pose a greater burden.

221. The proposed rule requires that each corporate family have on file one MBR tariff of general applicability, with all affiliates with market-based rate authority separately identified in the tariff. Although this may initially increase the burden of document preparation and organization for parent utilities, long-term benefits will be realized that reduce burdens on utilities and the Commission. A tariff of general applicability will decrease document preparation by providing a clearly defined statement of the information sought by the Commission. Moreover, a single tariff for each corporate family will reduce the filing burden on utilities. Small entities affiliated with a parent utility need not prepare a separate tariff; rather, they will merely add their company name to their parent utility's tariff. Thus, the burden is decreased.

222. The triennial review submissions that provide updated market power analyses are required for the retention of market-based rate authority. Category 2 utilities shall continue to submit this analysis, which poses no greater burden than that already in place. However, the proposed regulations would result in fewer filings with the Commission than currently required for qualified smaller utilities' (Category 1) retention of market-based rate authority. Those who do have to file are able to use short cuts described above (*i.e.*, simplifying assumptions). Thus, the proposed rule would be less burdensome economically and reduce the frequency of document preparation for market-based rate authority retention for qualified smaller utilities.

XIII. Comment Procedures

223. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 7, 2006. Reply comments are due September 6, 2006. Comments and reply comments must refer to Docket No. RM04–7–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments and reply comments may be filed either in electronic or paper format.

224. Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain

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[189] *See* 44 U.S.C. 3506(c) (2004).

[190] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 30,783 (1987).

[191] 18 CFR 380.4 (2005).

[192] *See* 18 CFR 380.4(a)(2)(ii).

[193] *See* 18 CFR 380.4(a)(15).

[194] 5 U.S.C. 601–12 (2000).

[195] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201 (2004) (section 22, Utilities, North American Industry Classification System, NAICS).

other file formats. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. This will enhance document retrieval for both the Commission and the public. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required. Commenters that are not able to file comments and reply comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

225. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments and reply comments on other commenters.

XIV. Document Availability

226. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

227. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

228. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.27 is revised as follows:

§ 35.27 Authority of State Commissions.

Nothing in this part—

(a) Shall be construed as preempting or affecting any jurisdiction a state commission or other state authority may have under applicable state and federal law, or

(b) Limits the authority of a state commission in accordance with state and federal law to establish:

(1) Competitive procedures for the acquisition of electric energy, including demand-side management, purchased at wholesale, or

(2) Non-discriminatory fees for the distribution of such electric energy to retail consumers for purposes established in accordance with state law.

3. Subpart H is revised to read as follows:

Subpart H—Wholesale Sales of Electric Energy, Capacity and Ancillary Services at Market-Based Rates

Sec.

§ 35.36 Generally.

(a) For purposes of this subpart:

(1) *Seller* means any person that has authorization to or seeks authorization to engage in sales for resale of electric energy at market-based rates under section 205 of the Federal Power Act.

(2) *Category 1 Sellers* means wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation; that do not own or control transmission facilities (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns or controls transmission facilities; that are not affiliated with a public utility with a franchised service territory; and that do not raise other vertical market power issues.

(3) *Category 2 Sellers* means any Sellers not in Category 1.

(4) *Inputs to electric power production* means sites for development of generation, fuel inputs such as coal facilities, and the transportation or distribution of inputs to electric power production such as gas storage, intrastate gas transportation and distribution systems, and rail cars/barges for the transportation of coal.

(5) *Franchised public utility* means a public utility with a franchised service obligation under state law and that has captive customers.

(6) *Non-regulated power sales affiliate* means any non-traditional power seller affiliate, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are not regulated on a cost basis under the FPA.

(b) The provisions of this subpart apply to all sellers authorized, or seeking authorization, to make sales for resale of electric energy, capacity or ancillary services at market-based rates unless otherwise ordered by the Commission.

§ 35.37 Market power analysis required.

(a) In addition to other requirements in subparts A and B, a Seller must submit a market power analysis in the following circumstances: when seeking market-based rate authority; for Category 2 Sellers, every three years, according to the schedule contained in Order No. ____, FERC Stats. & Regs. ¶ 31, ____; or any other time the Commission directs a Seller to submit one. Failure to timely file an updated market power analysis will constitute a violation of Seller's market-based rate tariff.

(b) A market power analysis must address whether a Seller has horizontal and vertical market power.

(c) There will be a rebuttable presumption that a Seller lacks horizontal market power if it passes two indicative market power screens: first, a pivotal supplier analysis based on the annual peak demand of the relevant market and; second, a market share analysis applied on a seasonal basis. There will be a rebuttable presumption that a Seller possesses horizontal market power if it fails either screen. A Seller that has horizontal market power, or that has not rebutted a presumption of horizontal market power, is subject to mitigation, as described in § 35.38.

(d) To demonstrate a lack of vertical market power, a Seller that owns, operates or controls transmission

facilities, or whose affiliates own, operate or control transmission facilities, must have on file with the Commission an Open Access Transmission Tariff, as described in § 35.28.

(e) To demonstrate a lack of vertical market power in wholesale energy markets through the affiliation, ownership or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production, a Seller must provide the following information: a description of its affiliation, ownership or control of inputs to electric power production; a description of its ownership or control of intra-state transportation or distribution of inputs to electric power production; a description of its ownership or control of any sites for new generation capacity development; and a statement that it cannot erect barriers to entry in the relevant markets.

§ 35.38 Mitigation.

(a) A Seller that has been found to have market power in generation or that is presumed to have horizontal market power by virtue of failing or foregoing the horizontal market power screens, as described in § 35.37(c), may adopt the default mitigation detailed in paragraph (b) of this section or may propose mitigation tailored to its own particular circumstances to eliminate its ability to exercise market power.

(b) Default mitigation consists of three distinct products: (i) sales of power of one week or less priced at the Seller's incremental cost plus a 10 percent adder; (ii) sales of power of more than one week but less than one year priced at no higher than a cost-based ceiling reflecting the costs of the unit(s) expected to provide the service; and (iii) new contracts filed for review under section 205 of the Federal Power Act for sales of power for one year or more priced at a rate not to exceed embedded cost of service.

§ 35.39 Affiliate restrictions.

(a) *Restriction on affiliate sales of electric energy.* As a condition of obtaining and retaining market-based rate authority, no wholesale sale of electric energy may be made between a public utility Seller with a franchised service territory and a non-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act. Failure to satisfy this condition will constitute a violation of the Seller's market-based rate tariff. All authorizations to engage in affiliate wholesale sales of electricity must be listed in a Seller's market-based rate tariff.

(b) *Separation of functions.* (1) For the purpose of this subsection, entities acting on behalf of and for the benefit of a franchised public utility (such as entities managing the electrical generation assets of the franchised public utility) are considered part of the franchised public utility. Entities acting on behalf of and for the benefit of a franchised public utility's non-regulated power sales affiliates are considered part of the non-regulated affiliated entities.

(2) To the maximum extent practical, the employees of a non-regulated power sales affiliate will operate separately from the employees of any affiliated franchised public utility.

(c) *Information sharing.* All market information shared between a franchised public utility and a non-regulated power sales affiliate will be disclosed simultaneously to the public. This includes, but is not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but they may not serve as a conduit of information to non-support personnel.

(d) *Non-power goods or services.* (1) Sales of any non-power goods or services by a franchised public utility, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a non-regulated power sales affiliate will be at the higher of cost or market price.

(2) Sales of any non-power goods or services by a non-regulated power sales affiliate to an affiliated franchised public utility will not be at a price above market.

(e) *Other.* (1) To the extent a non-regulated power sales affiliate seeks to broker power for an affiliated franchised public utility:

(i) The non-regulated power sales affiliate must offer the franchised public utility's power first;

(ii) The arrangement between the non-regulated power sales affiliate and the franchised public utility must be non-exclusive; and

(iii) The non-regulated power sales affiliate may not accept any fees in conjunction with any brokering services it performs for an affiliated franchised public utility.

(2) To the extent a franchised public utility seeks to broker power for a non-regulated power sales affiliate:

(i) The franchised public utility will be required to charge the higher of its costs for the service or the market rate for such services;

(ii) The franchised public utility will be required to market its own power first, and simultaneously make public (on an electronic bulletin board and/or the Internet) any market information shared with its affiliate during the brokering; and

(iii) The franchised public utility will post on an electronic bulletin board and/or the Internet the actual brokering charges imposed.

§ 35.40 Ancillary services.

(a) If a Seller seeks authority to make sales of ancillary services at market-based rates, it may offer such services provided the service has been authorized by the Commission and only in specific geographic markets as the Commission has authorized.

(b) If a Seller is authorized by the Commission to make sales of ancillary services at market-based rates as a third-party ancillary services provider:

(1) Seller shall establish an Internet-based site for providing information regarding ancillary services transactions including, prior to making transactions, postings of offers of services available and offering prices; procedures under which all customers would request service and make bids; postings of the actual transaction prices after the transactions are consummated; and accepted and denied requests and the reasons for denial. The site should conform to the applicable OASIS Standards and Communications Protocols.

(2) [Reserved]

(c) Seller is not authorized to make sales of ancillary services at market-based rates as a third-party ancillary services provider:

(1) To a regional transmission organization or an independent system operator (other than those ancillary services that are subject to § 35.40(a)) that has no ability to self-supply ancillary services but instead depends on third parties;

(2) When the underlying transmission service is on the transmission system of a transmission provider with whom the Seller is affiliated; or

(3) To a public utility who is purchasing ancillary services to satisfy its own Open Access Transmission Tariff requirements to offer ancillary services to its own transmission customers, unless Seller(s) receives separate authorization by the Commission.

§ 35.41 Market behavior rules.

(a) *Unit operation.* Where a Seller participates in a Commission-approved

organized market, Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Seller is not required to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or is a requirement applicable to Seller through Seller's participation in a Commission-approved organized market.

(b) *Communications.* Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.

(c) *Price reporting.* To the extent Seller engages in reporting of transactions to publishers of electric or natural gas price indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Unless Seller has previously provided the Commission with a notification of its price reporting status, Seller shall notify the Commission within 15 days of the effective date of this regulation or within 15 days of the date it begins making wholesale sales, whichever is earlier, whether it engages in such reporting of its transactions. Seller must update the notification within 15 days of any subsequent change in its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(d) *Records retention.* Seller shall retain, for a period of five years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to Seller's market-based rate tariff, and the prices it reported for use in price indices.

§ 35.42 Market-based rate tariff.

(a) In addition to other requirements in subpart A, every public utility that is authorized to sell electric energy at market-based rates pursuant to section 205 of the Federal Power Act must have on file with the Commission a tariff of general applicability. Such tariff must be the market-based rate tariff contained in Order No. ____, FERC Stats. & Regs. ¶ 31, ____ (Final Rule on Market-Based Rates for Wholesale Sales of Electricity by Public Utilities).

(b) The market-based rate tariff contained in Order No. ____, FERC Stats. & Regs. ¶ 31, ____ must be filed by Sellers who have been granted market-based rate authority prior to the issuance of Order No. _____, in accordance with Order No. _____, FERC Stats. & Regs. ¶ 31, ____ (Final Rule on Electronic Tariff Filing). A market-based rate tariff must be filed by a Seller who is initially seeking market-based rates at the time it applies for market-based rate authorization.

(c) Each corporate family will file a single market-based rate tariff, with all affiliates with market-based rate authority separately identified in the tariff.

§ 35.43 Change in status reporting requirement.

(a) As a condition of obtaining and retaining market-based rate authority, a Seller must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, the following:

(1) Ownership or control of generation capacity that results in net increases of 100 MW or more, or transmission facilities or inputs to electric power production other than fuel supplies, or

(2) Affiliation with any entity not disclosed in the application for market-based rate authority that owns, operates or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.

(b) Any change in status subject to paragraph (a) of this section must be filed no later than 30 days after the change in status occurs. Failure to timely file a change in status report constitutes a tariff violation.

Appendix A to Subpart H—Proposed Market-Based Rate Tariff

MARKET-BASED RATE TARIFF

Seller(s) under this tariff:	Docket No. authorizing market-based rates:
ABC, Inc	Docket No. ERXX–XXX–XXX.
XYZ, LLC	Docket No. ERXX–XXX–XXX.
Etc	etc.

1. Availability: Electric energy, capacity and ancillary services are available under this tariff for wholesale sales to purchasers with whom seller has contracted. Not all services may be available from all sellers listed. Seller shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning seller's market-based rate authority, including orders in which the Commission authorizes seller to engage in affiliate sales under this tariff or otherwise restricts or limits the seller's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning seller's market-based rate authority, will constitute a violation of this tariff.

2. Applicability: This tariff is applicable to all wholesale sales of electric energy, capacity and ancillary services by seller.

3. Rates: All sales shall be made at rates established by agreement between the purchaser and seller.

4. Other Terms and Conditions: All other terms and conditions not listed herein shall be established by agreement between the purchaser and seller.

5. Effective Date: This Rate Schedule is effective on the date of compliance with the final rule on Electronic Tariff Filings, Order No. ____, FERC Stats. & Regs. ¶ 31,____.

Docket No. Approving Affiliate Sales

Docket No. ERXX–XXX–XXX
Docket No. ERXX–XXX–XXX
Etc.
☐ Check if Not Applicable

Docket No. Imposing Restrictions on Market-Based Rate Authority

Docket No. ERXX–XXX–XXX
Docket No. ERXX–XXX–XXX
Etc.
☐ Check if Not Applicable

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix B—Schedule for Regional Triennial Review Process

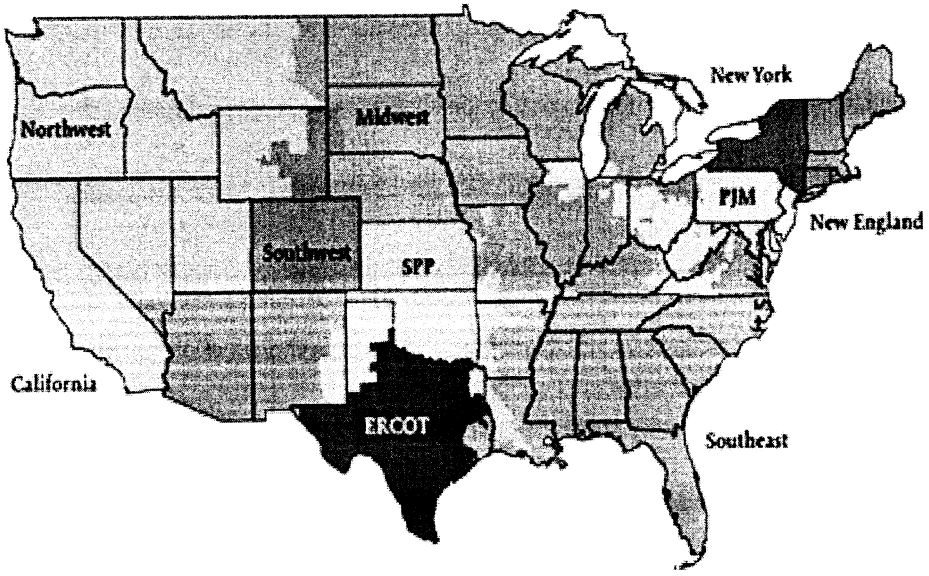
All Category 2 sellers that own or control generation in the California, Northwest, Southwest, Midwest, SPP, Southeast, PJM, New York, and New England regions during the period specified below (Qualification Period) will file updated market power analyses within the filing period specified in the following schedule. Triennial Reviews

should reflect the most recently available historical data from the calendar year prior to the year of filing. The regions are depicted in the map that follows. (Source: Federal Energy Regulatory Commission, 2004 State of the Markets Report, staff report prepared by the Office of Market Oversight & Investigations, June 2005.)

Region	Qualification period	Filing period
PJM	2006	April 1–30, 2007.
New York	2006	July 1–30, 2007.
New England	2006	October 1–30, 2007.
Midwest	2007	April 1–30, 2008.
SPP	2007	July 1–30, 2008.
Southeast	2007	October 1–30, 2008.
California	2008	April 1–30, 2009.
Northwest	2008	July 1–30, 2009.
Southwest	2008	October 1–30, 2009.
PJM	2009	April 1–30, 2010.
New York	2009	July 1–30, 2010.
New England	2009	October 1–30, 2010.
Midwest	2010	April 1–30, 2011.
SPP	2010	July 1–30, 2011.
Southeast	2010	October 1–30, 2011.
California	2011	April 1–30, 2012.
Northwest	2011	July 1–30, 2012.
Southwest	2011	October 1–30, 2012.

This review cycle will be repeated in subsequent years.

Docket No. RM04-7-000



Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix C—Standard Screens Format

AMOUNTS LISTED ARE FOR ILLUSTRATIVE PURPOSES ONLY

[Pivotal supplier analysis]

	Row	(MW)	Reference
Supply:			
Applicant's Installed Capacity	A	19,500	Workpaper 1.
Applicant's Long-Term Firm Purchases	B	500	Workpaper 6.
Applicant's Long-Term Firm Sales	C	(1,000)	Workpaper 2.
Applicant's Imports (Limited by Simultaneous Import Capability)	D	0	Workpaper 5.
Non-Affiliate Local Installed Capacity	E	8,000	Workpaper 1.
Non-Affiliate Long-Term Firm Purchases	F	500	Workpaper 6.

AMOUNTS LISTED ARE FOR ILLUSTRATIVE PURPOSES ONLY—Continued

[Pivotal supplier analysis]

	Row	(MW)	Reference
Non-Affiliate Long-Term Firm Sales	G	(2,500)	Workpaper 2.
Non-Affiliate Uncommitted Capacity Imports	H		
(Limited by Simultaneous Import Capability)	I	3,500	Workpaper 5.
Control Area Reserve Requirement	J	(2,160)	Workpaper 3.
Amount of Line J Attributable to Applicant, if any	K	(2,160)	Workpaper 3.
	L		
Total Uncommitted Supply (SUM A,B,C,D,E,F,G,I,J,Q)	M	9,840	
	N		
Load:	O		
Control Area Annual Peak Load	P	18,000	Workpaper 4.
Average Daily Peak Native Load in Peak Month	Q	(16,500)	Workpaper 4.
Amount of Line Q Attributable to Applicant, if any	R	(16,500)	Workpaper 4.
	S		
Wholesale Load (−SUM P,Q)	T	(1,500)	
	U		
Net Uncommitted Supply (SUM M,T)	V	8,340	
	W		
Applicant's Uncommitted Capacity (SUM A,B,C,K,R)	X	340 PASS	

WHOLESALE MARKET SHARE ANALYSIS

[Amounts for Illustrative Purposes Only]

	Row	Q1 (MW)	Q2 (MW)	Q3 (MW)	Q4 (MW)	Reference
Applicant's Installed Capacity	A	19,500	19,500	19,500	19,500	Workpaper 1.
Applicant's Long-Term Firm Purchases	B	500	500	500	500	Workpaper 6.
Applicant's Long-Term Firm Sales	C	(1,000)	(1,000)	(1,000)	(1,000)	Workpaper 2.
Applicant's Seasonal Average Planned Outages.	D	(4,000)	(3,000)	(800)	(3,500)	Workpaper 7.
Applicant's Imports (Limited by Simultaneous Import Capability).	E	0	0	0	0	Workpaper 5.
Average Peak Native Load in the Season	F	(11,500)	(10,000)	(12,500)	(11,500)	Workpaper 8.
Amount of Line F Attributable to Applicant, if any.	G	(11,500)	(10,000)	(12,500)	(11,500)	Workpaper 8.
Amount of Line F Attributable to Others, if any.	H	(0)	(0)	(0)	(0)	Workpaper 8.
Control Area Reserve Requirement	I	(1,500)	(1,320)	(1,560)	(1,500)	Workpaper 3.
Amount of Line I Attributable to Applicant, if any.	J	(1,500)	(1,320)	(1,560)	(1,500)	Workpaper 3.
Amount of Line I Attributable to Others, if any.	K	(0)	(0)	(0)	(0)	Workpaper 8.
Non-Affiliate Local Installed Capacity	L	8,000	8,000	8,000	8,000	Workpaper 1.
Non-Affiliate Long-Term Firm Purchases	M	500	500	500	500	Workpaper 6.
Non-Affiliate Long-Term Firm Sales	N	(2,500)	(2,500)	(2,500)	(2,500)	Workpaper 2.
Non-Affiliate Local Seasonal Average Planned Outages.	O	(800)	(200)	(300)	(400)	Workpaper 7.
Non-Affiliate Uncommitted Capacity Imports.	P					
(Limited by Simultaneous Import Capability).	Q	5,000	4,500	3,500	4,000	Workpaper 5.
	R					
Total Competing Supply (SUM L,M,N,O,Q,H,K).	S	10,200	10,300	9,200	9,600	
Applicant's Uncommitted Capacity (SUM A,B,C,D,E,G,J).	T	2,000	4,680	4,140	2,500	
Total Seasonal Uncommitted Capacity (SUM S,T).	U	12,200	14,980	13,340	12,100	
	V					
Applicant's Market Share (T/U)	W	16.39% PASS	31.24% FAIL	31.03% FAIL	20.66% FAIL	

[FR Doc. 06–4903 Filed 6–6–06; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Wednesday
June 7, 2006

Part IV

Department of Housing and Urban Development

24 CFR Parts 81, 115, and 203
Authority of Agencies in the Fair Housing Assistance Program To Investigate Allegations of Discrimination in Lending Complaints
Prohibition of Property Flipping in Single Family Mortgage Insurance Programs
Regulatory Amendments To Strengthen Prevention of Predatory Lending Practices; Rules and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 115

[Docket No. FR–5047–N–01]

Authority of Agencies in the Fair Housing Assistance Program To Investigate Allegations of Discrimination in Lending Complaints

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Statement of policy.

SUMMARY: This statement of policy advises the public that HUD does not view two recent fair housing federal court decisions as in any way affecting the authority of state and local agencies to enforce their own fair housing laws that HUD has certified as substantially equivalent to the federal Fair Housing Act. State and local fair housing enforcement agencies administering substantially equivalent fair housing laws have the authority to enforce those statutes and ordinances against any respondent, including a national bank, within their jurisdictions. This is not a new policy. This statement of policy clarifies existing regulations at 24 CFR 115.202.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–8000; telephone (202) 619–8046 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Two recent, related decisions in the United States District Court for the Southern District of New York (*The Office of the Comptroller of the Currency* v. *Spitzer*, 396 F.Supp.2d 383 (S.D.N.Y. 2005) (''*OCC* v. *Spitzer*'') and *The Clearing House Association, L.L.C.* v. *Spitzer*, 394 F.Supp.2d 620 (S.D.N.Y. 2005) (''*Clearing House* v. *Spitzer*'')), rejected the New York Attorney General's assertion of visitorial authority over national banks in order to enforce the state's fair housing law. As a result of these decisions, a question has arisen regarding the authority of state and local agencies to conduct investigations under laws that HUD has certified as being substantially equivalent to the federal Fair Housing Act.

It is HUD's position that these cases do not affect the authority of state and local agencies to enforce laws that HUD has certified as substantially equivalent. In reaching its decision in *Clearing House* v. *Spitzer*, the Court took notice of the fact that the New York Attorney General was not the entity authorized to bring actions under the state's certified law. The Court noted, however, that the federal Fair Housing Act ''establishes several means of enforcing these provisions and the other anti-discrimination provisions in the Act, including administrative enforcement by the U.S. Secretary of Housing and Urban Development; administrative enforcement by certified state and local agencies; private causes of action by aggrieved persons; and civil enforcement by the U.S. Attorney General where that federal official discerns a 'pattern and practice' of violations.'' *Id.* at 628 (Emphasis added.)

Therefore, it is HUD's statement of policy that state and local fair housing enforcement agencies who are administering fair housing laws that HUD has certified as substantially equivalent to the Federal Fair Housing Act have the authority to enforce those statutes and ordinances against any respondent, including a national bank, within their jurisdictions.

Dated: May 12, 2006.

Karen A. Newton,

Deputy Assistant Secretary for Operations and Management, Fair Housing and Equal Opportunity.

[FR Doc. E6–8845 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4911–F–02]

RIN 2502–AI18

Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs; Additional Exceptions to Time Restriction on Sales

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations that address the predatory practice of property ''flipping'' and establishes certain time restrictions regarding the sale of properties whose purchase is being financed with Federal Housing Administration (FHA) mortgage insurance. The final rule broadens the exceptions to the time restrictions on sales to include government-sponsored enterprises (GSEs), state- and federally chartered financial institutions, nonprofits organizations approved to purchase HUD Real Estate-Owned (REO) single-family properties at a discount with resale restrictions, local and state governments and their instrumentalities, and, upon announcement by HUD through issuance of a notice, sales of properties in areas designated by the President as Federal disaster areas. This final rule follows publication of a December 23, 2004, interim rule, and takes into consideration the public comments received on the interim rule.

DATES: *Effective Date:* July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2004 (69 FR 77114), HUD published an interim rule revising its regulations addressing property ''flipping'' in the Federal Housing Administration (FHA) single-family mortgage insurance programs at 24 CFR 203.37a. Property ''flipping'' is a predatory lending practice whereby a property that was acquired is quickly resold for a considerable profit with an artificially inflated value, often assisted by a mortgagee's collusion with the property appraiser and with others involved in the mortgage loan transaction. Most property flipping occurs within a matter of days after the initial property acquisition. Minor cosmetic improvements, if any, may be made to the property to make it appeal to an unwary homeowner.

Among other requirements, § 203.37a sets forth time restrictions that make properties that have recently been resold ineligible as security for FHA-insured mortgage financing. Specifically, § 203.37a prohibits FHA-insured mortgage financing for any property being sold in 90 days or less after acquisition by the seller. Properties that are sold between 91 and 180 days after acquisition by the sellers to homebuyers seeking FHA-insured

financing are generally eligible for an FHA-insured mortgage, but are subject to additional documentation requirements to ensure that any increases in the values of the properties are supportable.

HUD's regulation at § 203.37a also provides that the time restrictions on resales do not apply to sales by HUD of its Real Estate-Owned (REO) properties pursuant to 24 CFR part 291, as well as single-family assets in revitalization zones that HUD acquires and sells under the provisions of section 204 of the National Housing Act (12 U.S.C. 1710). Those time restrictions are also inapplicable to the sale of properties acquired by an employer or relocation agency in connection with the relocation of an employee who needs to sell his/her home in order to relocate.

The December 23, 2004, interim rule broadened the exceptions to the time restrictions to include all federal agencies that acquire properties as a result of a function of their programs and quickly market and sell these acquired properties. The interim rule also clarified that the time restrictions on sales do not apply to properties that have been acquired by inheritance.

Although the scope of the December 23, 2004, interim rule was limited to the two additional exceptions described above (for federal agencies and inherited properties), HUD recognized that there may be other circumstances or categories of sales where an exception to the time restrictions may be appropriate and consistent with the goals of the property flipping restrictions. Accordingly, HUD issued the regulatory amendments on an interim basis and provided the public with a 60-day comment period.

II. This Final Rule: Differences Between the December 23, 2004, Interim Rule and This Final Rule

This final rule follows publication of the December 23, 2004, interim rule and takes into consideration the public comments received on the interim rule. After careful consideration of the public comments, HUD has decided to include additional exemptions to the time restrictions on resales. Specifically, additional exceptions to the time restrictions on property resales will now include: (1) The government-sponsored enterprises (GSEs); (2) state- and federally chartered financial institutions; (3) nonprofit organizations approved to purchase HUD Real Estate-Owned (REO) single-family properties at a discount with resale restrictions; and (4) local and state governments and their instrumentalities.

In addition, as a result of HUD's experience with recovery efforts following Hurricane Katrina, the Department believes that an additional exemption to the time restriction is justified for presidentially declared disaster areas. When the President declares an area a federal disaster area, and housing options may be immediately limited, it is important that homeownership opportunities be made available in the affected areas as soon as possible. The additional exemption will increase homeownership opportunities and bring these properties into the marketplace quickly to assist displaced individuals and families, when the president declares a county, parish, state, or city as a disaster area. The final rule provides that, only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas will be exempt from the time restriction on resales. This particular property flipping exemption will become effective only when the notice is actually issued. The notice will specify the duration for which the exemption will be in effect.

III. Discussion of Public Comments

The public comment period on the December 23, 2004, interim rule closed on February 22, 2005. HUD received 69 public comments on the interim rule. Comments were received from nonprofit community development organizations; trade organizations representing the real estate, mortgage banking, and homebuilder industries; mortgage loan originators; and private citizens. This section of the preamble presents a summary of the significant issues raised by the public commenters and HUD's responses to these issues, the vast majority of which were requests that specific types of transactions be exempt from the time sale restrictions.

Comment: Nonprofit community housing development organizations (CHDOs) should be exempted from the time restrictions on resales. Several commenters explained that one particular nonprofit community development corporation, with whom the commenters are affiliated, operates a purchase, rehabilitation, and resale program for homeownership. Under that program, a homebuyer is pre-approved by a lender, the CHDO purchases and rehabilitates a home within 30 to 45 days, and the CHDO then transfers ownership to the homebuyer. The commenters wrote that the restrictions of the 90-day prohibition would cause hardships for homebuyers in that the homebuyer must continue to pay rent or stay in substandard housing; the lender must renew the loan approval documents, adding expense for the homebuyer; the appraiser must recertify the home's value, adding expense for the homebuyer; and the interest rate lock-ins are not always available for this length of time, adding expense to the homebuyer. Another commenter wrote that CHDOs should be exempted from the time restrictions on resales due to the monitoring of CHDO activities by federal and state programs. The commenter, writing on behalf of an association of nonprofit developers, wrote that HUD's HOME program has designated CHDOs as Participating Jurisdictions to act on behalf of HUD. The commenter also wrote that flipping restrictions have adversely affected programs designed to serve people at limited income levels, and that because organization and development activities performed by CHDOs are funded and monitored by federal and state government agencies, CHDOs using state and federal programs do not engage in predatory lending practices.

HUD Response. HUD recognizes the potential hardship the 90-day holding period may impose on legitimate transactions; however, HUD does not agree that CHDOs should be exempt from the 90-day prohibition on property flipping without meeting additional criteria. While HUD recognizes the valuable contribution that many CHDOs have made in furthering homeownership opportunities, CHDOs are private, nonprofit enterprises that do not necessarily receive the level of oversight HUD believes is necessary to exempt this category of housing provider. CHDOs may or may not receive federal funding, and the level of supervision or monitoring may not be sufficient for HUD to exempt CHDOs across the board.

In this final rule, however, HUD is exempting nonprofit organizations approved to purchase HUD homes, and these nonprofit organizations may also be CHDOs. This exemption will also apply to instrumentalities of government acceptable to HUD that provide secondary financing for the borrower's down payment or closing costs as per section 528 of the National Housing Act (12 U.S.C. 1735f–6), and those HUD-approved nonprofit groups permitted to purchase HUD REO properties at a discount with resale restrictions. CHDOs that have met either of these thresholds are exempt from the time resale restrictions.

Comment: Nonprofit entities should be excluded from the time resale restrictions. Two commenters wrote that nonprofit organizations whose business

is the furtherance of affordable housing should be exempted.

HUD Response. HUD has not revised the rule in response to these comments. While HUD recognizes that the majority of nonprofit organizations operate their affordable housing programs in a responsible manner, the obtaining of Internal Revenue Service nonprofit status does not alone guarantee responsible leadership or operational integrity. HUD has, in some areas, suffered considerable losses to its insurance funds by the actions of nonprofit organizations that victimized homebuyers as well. Therefore, this final rule continues to provide that status as a nonprofit alone will not exempt that entity from the time restriction on resales. However, HUD recognizes the valuable contribution nonprofit organizations make in the expansion of affordable housing opportunities. Accordingly, as described elsewhere in this preamble, the final rule exempts nonprofit organizations approved to purchase HUD REO properties.

Comment: Nonprofit organizations that participate as a buyer and reseller of HUD homes in HUD's Single Family Property Disposition (SFPD) Program and nonprofit entities approved to utilize the HUD Discount Program to provide affordable housing to low-income families should be exempt from the time restrictions on resales. One commenter wrote that the SFPD Program holds the resale price at no more than 10 percent margin over net development cost, and that the current rule forced the commenter to offer a low-income buyer significantly worse terms than under the previous FHA loan commitment. Another commenter wrote that nonprofit organizations participating in the REO Program can hold only so many properties at one time, thus creating a financial burden for the nonprofit organization, and that it is impossible for a nonprofit organization to inflate the sales price when it is regulated by the so-called 110 percent rule. The commenter wrote that a homebuyer often must move on to another house or switch to conventional financing. Another commenter wrote that abuse of the HUD Discount Program would be impossible with the current checks and balances in place, and that time resale restrictions hinder nonprofits from what they are supposed to do; therefore ''the losers * * * are the low income families.''

HUD Response. HUD agrees with the commenters that nonprofit organizations that have been approved to purchase HUD REO properties should not be subject to the time restrictions on resales when those nonprofits are reselling a property it bought from HUD's inventory. The limits imposed on the resale price preclude the egregious sceneries of artificially inflated values that were the basis of the original property-flipping rule. Also, as stated above, those nonprofit organizations that have received HUD approval to participate in the HUD Discount Program will be exempt from the time restrictions on resales.

Comment: State-licensed, federally-chartered lenders, or FHA-approved lenders, including Fannie Mae and Freddie Mac, should be exempt from the time restrictions on resales. One commenter stated that the intent of the 90-day rule is to prohibit property flipping, but that lending institutions do not engage in such an activity. Allowing state-licensed, federally chartered FHA-approved lenders to be exempt would increase lending opportunities in low- to moderate-income communities and expand homeownership in them. The commenter explained that because many borrowers cannot proceed with FHA's 203(k) loans under the 90-day rule, the effect of the 90-day rule is to promote investor purchases rather than owner occupancy. Another commenter wrote that regulated lenders are consistently reviewed and would have much to lose if they flipped property. The commenter explained that the majority of flipping cases have involved mostly appraisers, real estate brokers, and sellers—not lenders. Lenders have an incentive to sell foreclosed property quickly, and everyone wins—the lender, the new homeowner, and the neighborhood; and allowing exceptions for the REO properties of regulated lenders would expand the availability of FHA's 203(k) program. Another commenter wrote that Fannie Mae, Freddie Mac, or bank-owned institutional lenders are simply left with inventory and are trying to sell the inventory as quickly as possible, and, most of the time, at a very under-inflated price. The commenter wrote that Fannie Mae ''appears to be changing their guidelines in an attempt to monitor and control property flipping.''

HUD Response. HUD agrees and recognizes that state- and federally chartered financial institutions, and the GSEs, are highly regulated or supervised by state and federal agencies and do not engage in predatory practices. HUD believes that because these entities are so closely monitored, restricting these institutions from resales would ultimately hurt prospective FHA borrowers. Therefore, this final rule exempts these enterprises from the time restrictions on resales.

Comment: Homebuilders' trade-in transactions should be exempt from time restrictions on resales. One commenter wrote that when a homebuilder accepts a homebuyer's existing home as a trade-in, the homebuilder makes the necessary repairs, and then the homebuyer sells the home quickly. The commenter wrote that builders assume risks in these transactions. The commenter explained that the 90-day resale prohibition blocks legitimate transactions and creates unnecessary hardships for builders and customers by preventing potential buyers from using FHA's mortgage insurance programs. The commenter wrote that HUD should repeal § 203.37a(b)(2) and amend CFR 203.37a(b)(3) to apply to ''Resales occurring up to 180 days following acquisition.'' The commenter wrote that trade-in practices of builders do not fit HUD's description of property flipping as described in the interim rule and that HUD has provided no proof that extending the exceptions to cover builders' trade-in transactions would ''substantially weaken the regulatory safeguards against property flipping.''

HUD Response. HUD has not revised the rule to exempt builders from the property-flipping time restrictions for trade-ins connected with the resale of acquired homes. Under such trade-in programs, there are no assurances to prevent the subsequent purchaser from becoming a victim of collusion among the seller, the lender, and the appraiser. It was never HUD's intention to eliminate the ability of builders, investors, and contractors to profit from their actions, but rather to ensure that homebuyers are not purchasing overvalued houses and becoming the unwitting victims of predatory practices. While most builders do not engage in the practices that the property flipping regulation is meant to preclude, the opportunity to victimize the unwitting purchaser would be enhanced by exempting trade-ins from the property flipping rule.

Comment: Investors, including real estate agents, should be exempt from time restrictions on resales. One commenter wrote that investors make legitimate livings purchasing and reconditioning distressed properties and that legitimate property reconditioning is not done overnight. The commenter wrote that one of this rule's consequences may be continued curtailment of real estate investors in the affordable housing market. The commenter wrote that HUD should consider granting exceptions to the time

sale restrictions, on a case-by-case basis, when the mortgagee can show that the sales price of the property corresponds with its market value.

HUD Response. HUD has not adopted the commenter's suggestion. While most investors do operate in a responsible manner, the abuses uncovered that resulted in the issuance of HUD's regulatory prohibition on property flipping were the result of actions by investors, other sellers, real estate agents, appraisers, and others with a vested interest in the sale of real estate. HUD also does not agree to case-by-case exceptions due to resource limitations. Mortgagees have always been required to show that the sales price corresponds to the market value; the problem lies with false appraised values, which are often central to the egregious abuse that the property flipping regulations are designed to prevent.

Comment: Local, county, and state government agencies and the instrumentalities of local governments, including state housing finance agencies, should be exempt from time restrictions on resales. One commenter wrote that local, county, and state government agencies should be exempt from time sale restrictions, because they at times acquire properties as a result of the function of their programs: revitalizating neighborhoods, retaining affordability, resolving overcrowding, etc. The properties acquired are then sold to a qualifying low-income household within a time frame that works for all parties involved, which can be less than 90 days, and most of these households require FHA mortgage insurance. Another commenter wrote that state housing finance agencies should be exempted.

HUD Response. HUD agrees, and, as described elsewhere in this preamble, will exempt those enterprises permitted under section 528 of the National Housing Act to provide secondary financing on FHA-insured mortgages. HUD believes that because such entities are permitted under the law to provide such down payment assistance, that suggests that they also be exempt from the property flipping restrictions.

Comment: Family members' property transactions should be exempt from time restrictions on resales. One commenter wrote that an exception should be granted to a family member who quitclaims his or her interest in a property to another family member because of illness or financial hardship; the family member may then quickly refinance the property to pay for medical expenses. Another commenter requested exemptions for properties acquired in a divorce situation.

HUD Response. Nothing in the property flipping rule precludes the individual who obtains ownership from a quitclaim deed from refinancing. However, HUD does not believe it would be appropriate to carve out resale exemptions for such rarely occurring events and ones that would require substantial documentation in order to obtain such an exemption (*i.e.*, proof of family member relationship, as well as financial hardship or illness). The individual that gives the quitclaim due to illness or financial difficulty may sell the property him or herself or execute power of attorney to another family member to do so on his/her behalf. Divorce situations are not subject to the property flipping rules since the acquisition of property in such situations does not occur from a sale but as the result of a court order, separation agreement, or divorce decree and, in most cases, the seller would have been on title previously with the vacating spouse.

Comment: Additional co-tenancy transactions should be exempt from time restrictions on resales. One commenter wrote that general situations where a property may have been transferred from two owners into the name of one of those owners (*i.e.*, divorce, joint ownership to sole ownership, etc.) should not be considered property flipping. The commenter cited an example where two non-married individuals jointly owned a property, and one of them assumed the mortgage into his own name; thus, the other party signed the entire property over to one person. The commenter wrote that in that example, there was not truly a sale even though it would appear of record that one person sold his or her one half-interest to the other individual. The commenter asked whether the property flipping regulations would define this situation as property flipping.

HUD Response. HUD has never considered such a scenario as meeting the threshold for triggering the 90-day waiting period for resale eligibility using FHA financing. Most such transactions do not constitute a ''sale'' and, as long as one of the parties retains ownership, that party may sell without the necessity of being the sole owner for 90 days.

Comment: The time resale restrictions are not fair to real estate agents, builders, contractors, buyers, and lenders. One commenter wrote that real estate agents, because they must hold homes taken in on trade from a homeowner, would lose many resale opportunities due to a 90-day waiting period. The commenter wrote that the problem really seems to be with the appraisers and the commenter asks whether the real issue is that appraisers cannot determine the property values. The commenter explained that the rule is not fair to buyers, since buyers have a right to obtain the best sale price possible. Contractors and builders are often experts at remodeling homes, and the 90-day rule limits the ability of buyers to purchase homes that contractors and builders have remodeled. The commenter questioned why some government agencies are exempt from the rule and wrote, ''Limiting the turnover of homes does not change the value of the home. It only puts a limitation on the buyer, the remodeler, the Realtor and the Lender that had to foreclose on the property.''

HUD Response. HUD has not revised the rule in response to this comment. HUD continues to believe that 90 days is not an unreasonable waiting period if actual remodeling, repairs, and improvements are being made on a property before it is resold.

Comment: Any outstanding uninsured cases should be insured. One commenter requested that any outstanding uninsured cases where a governmental agency was the seller be insured at this point.

HUD Response. HUD will advise its Homeownership Centers (HOCs) that if any unendorsed loans become eligible for insurance due to the changes promulgated in this final rule, that endorsement should go forward if all other eligibility criteria are met.

Comment: Clarification sought as to indemnification of a government agency. One commenter asked for clarification concerning loans where HUD has required indemnification due to property flipping involving a governmental agency. The commenter asked if the lenders would now be free from indemnification.

HUD Response. HUD has surveyed four of its HOCs and is not aware of any indemnification requests being executed by lenders where the seller was a government agency. However, HUD will instruct the HOCs that they are to lift indemnification if it was requested solely due to the status of the seller as a government agency.

Comment: Property flipping does not correlate with time resale restrictions. One commenter wrote that HUD's definition of property flipping may unfairly link the time in which a recently acquired property is sold with separate fraudulent acts.

HUD Response. HUD fully recognizes that the time resale restrictions are not a total solution to predatory lending. Nevertheless, in HUD's examination of

predatory lending practices, egregious examples of predatory lending included property resales occurring within a short time period and organized by appraisers and lenders as pre-arranged transactions with an unwitting buyer. This illustrates that property resales in short time frames often correlate with predatory lending practices. Thus, a 90-day holding period helps assure that the buyer is not victimized by a seller who acquires a property with the intention of immediately flipping it to the buyer for an amount that could not be realized without the help of the appraiser and others who would profit illicitly from the resale.

IV. Justification for Final Rulemaking for Properties Located in Presidentially Declared Disaster Areas

Before issuing a rule for effect in accordance with HUD's regulations on rulemaking in 24 CFR part 10, HUD generally publishes a rule for public comment. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (*see* 24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment on the exemption to the time restriction on resales for those properties located in presidentially declared disaster areas, in that prior public comment on this exemption is contrary to the public interest. The reason for HUD's determination is as follows.

An exemption for presidentially declared disaster areas would benefit those areas in which housing options may be immediately limited. As noted above in this preamble, it is important that homeownership opportunities be made available in affected areas as soon as possible, and this exemption should increase homeownership opportunities and bring these properties into the marketplace relatively quickly. Delaying the effectiveness of this section of the final rule for public comment on this exemption would unnecessarily delay the public from immediate access to additional housing opportunities. Accordingly, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this amended final rule to solicit prior public comment.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this final rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*). That Finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new or revised obligations of any kind on small entities participating in the FHA single-family mortgage insurance programs. Rather, the final rule is exclusively concerned with clarifying the scope of current regulatory requirements. Specifically, the final rule broadens the exceptions to the property-flipping time restrictions. To the extent that the final rule has any impact on small entities, it will be to benefit those small entities that fall under one of the listed exemptions to the time restrictions on resales. Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule will not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 203 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535d.

■ 2. Section 203.37a is amended by revising paragraph (c) to read as follows:

§ 203.37a Sale of property.

* * * * *

(c) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

* * * * *

Dated: May 25, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. E6–8844 Filed 6–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–5014–P–01]

RIN 2501–AD17

Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Regulatory Amendments To Strengthen Prevention of Predatory Lending Practices

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing changes to its regulations governing Fannie Mae and Freddie Mac (collectively, the government sponsored enterprises or GSEs) to reinforce the efforts of HUD and the GSEs to prevent predatory lending practices. The changes proposed by this rule would allow HUD to keep up-to-date with and combat new predatory lending practices as they are discovered and, therefore, strengthen HUD's oversight role in monitoring GSE practices to ensure that the loans the GSEs purchase are not contrary to responsible lending practices.

DATES: *Comment Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available, without change, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of comments submitted electronically are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises, Office of Housing, Room 3150; telephone (202) 708–2224. For fair lending questions, contact Bryan Greene, Director, Office of Policy, Legislative Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Room 5246; telephone (202) 708–1145. For legal questions, contact Paul S. Ceja, Assistant General Counsel for Government Sponsored Enterprises/RESPA, or Rhonda L. Daniels, Senior GSE/RESPA Division Attorney, Office of General Counsel, Room 9262; telephone (202) 708–3137. The address for all of these persons is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The above telephone numbers are not toll-free. Persons with hearing and speech impairments may access the phone numbers through TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

More Americans have achieved homeownership than at any time in our nation's history. Sixty-nine percent of households own their own homes. Minority homeownership rates have been increasing and in 2004 stood at 48.1 percent for Hispanics and 49.7 percent for African Americans. The growth in minority homeownership reflects the nation's enormous progress in expanding access to capital for previously underserved borrowers. HUD and other Federal agencies, the GSEs, state and local governments, and responsible lenders across the nation have all played a part in this progress. Governments and the private lending industry have taken several actions to expand homeownership to all Americans, with a special focus on increasing opportunities for first-time homebuyers and minority households. These actions include homebuying simplification, new financing options, and housing counseling.

Despite this progress, many families are suffering today because of abusive practices in a segment of the mortgage lending market. Predatory lending practices strip borrowers of home equity and threaten families with foreclosure, destabilizing the very communities in which some families are just now beginning to enjoy homeownership. Unscrupulous lenders that engage in predatory lending practices all too often target low-income families, minorities, first-time homebuyers, and the elderly.

HUD has been at the forefront in its Federal Housing Administration (FHA) programs in implementing rules, requirements, and other policies designed to prevent predatory lending practices in FHA programs. Fannie Mae and Freddie Mac also have taken leadership roles through various activities designed to prevent predatory lending, including educating potential borrowers about the homebuying process and identifying for these borrowers those lending practices that are predatory. The GSEs also work to protect borrowers from predatory lending practices by refusing to do business with financial institutions that engage in such practices.

In its final rule on Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for the Years 2005–2008 and Amendments to HUD's Regulation of Fannie Mae and Freddie Mac published on November 2, 2004 (69 FR 63580), HUD did not address anti-predatory lending policies. Given the serious consequences of predatory lending practices, HUD determined that it would be more effective to have a separate rule that addresses the subject of predatory lending practices.

II. This Proposed Rule

This rule proposes to amend the definitions of ''mortgages with unacceptable terms and conditions or resulting from unacceptable practices'' and ''mortgages contrary to good lending practices'' that are codified in 24 CFR 81.2 (Definitions). These two types of mortgages are ineligible for goals credit. Specifically, the rule proposes to include in each definition a new paragraph that allows the Secretary of HUD, through a notice and comment process, to add to the list of ''good lending practices'' or the list of ''unacceptable terms or conditions or resulting from unacceptable practices'' described in each definition. Currently, these lists can only be expanded upon the initiation of the GSEs with the Secretary's concurrence. The proposed process would provide a fast-track notice and comment process, separate from rulemaking, to give the Secretary discretion to add to the definitions of mortgages determined ineligible for goal or subgoal credit (*see* 24 CFR 81.16(c)(12)–(13)). At the same time, the new procedure would ensure the GSEs and others have the opportunity to comment before the definitions are expanded. Because unscrupulous lenders have become increasingly

creative in finding ways to strip borrowers of home equity, HUD and the GSEs must have the ability to respond quickly and effectively to prevent adverse outcomes for borrowers. In this regard, the definitions retain the existing authority of the GSEs to add to the respective lists, subject to the Secretary's concurrence.

III. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule is applicable only to the GSEs, which are not small entities within the meaning of the RFA. Therefore, the undersigned certifies that the rule does not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (12 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 81 as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

2. In § 81.2, revise paragraph (4) of the definition of *''mortgages contrary to good lending practices''* and revise paragraph (5) of the definition of *''mortgages with unacceptable terms or conditions or resulting from unacceptable practices,''* to read as follows:

§ 81.2 Definitions.

* * * * *

Mortgages contrary to good lending practices * * *

(4) Engage in other good lending practices that are:

(i)(A) Identified in writing by a GSE as good lending practices for inclusion in this definition; and

(B) Determined by the Secretary to constitute good lending practices; or

(ii) Identified by the Secretary as good lending practices through published notice that provides the opportunity for public comment prior to the inclusion in this definition.

Mortgages with unacceptable terms or conditions or resulting from unacceptable practices * * *

(5) Other terms or conditions that are:

(i)(A) Identified in writing by a GSE as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and

(B) Determined by the Secretary as an unacceptable term or condition of a mortgage for which goals credit should not be received; or

(ii) Identified by the Secretary as unacceptable terms or conditions or resulting from unacceptable practices through published notice that provides the opportunity for public comment prior to inclusion in this definition.

* * * * *

Dated: April 28, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–8843 Filed 6–6–06; 8:45 am]

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